

EXHIBIT NO. 1

City of Alexandria, Virginia

10  
1-24-04

MEMORANDUM

DATE: JANUARY 15, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: REVISED PROPOSED GENERAL POLICY GUIDELINES FOR THE VALUATION OF CITY RIGHT-OF-WAY PROPOSED TO BE VACATED

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**ISSUE:** Guidelines for the valuation of City right-of-way proposed to be vacated.

**RECOMMENDATION:** That City Council hold the public hearing on the proposed guidelines on January 24 and docket this item for consideration on Tuesday, January 27.

**BACKGROUND:** On December 8, 2003, City Council requested that the policy guidelines proposed by the City Manager (Attachment I) be revised to grandfather all projects currently in the pipeline from any new policy regarding the valuation of vacations. Also, City Council set the proposed guidelines for public hearing. The proposed General Guidelines which incorporates the revisions requested by City Council are included as Attachment II. The proposed General Guidelines are identical to that proposed in November except for the last paragraph, which has been added to reflect the requested City Council revision.

**ATTACHMENTS:**

Attachment I. City Council Docket Item 24, Dated December 8, 2003, Proposed General Policy Guidelines for the Valuation of City Right-of-Way Proposed to be Vacated

Attachment II. Amended Proposed General Policy for the Valuation of City Right-of-Way Proposed to be Vacated

**STAFF:**

Cindy Smith-Page, Director, Real Estate Assessments  
Barbara Ross, Deputy Director, Planning and Zoning

## City of Alexandria, Virginia

## MEMORANDUM

DATE: DECEMBER 4, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: PROPOSED GENERAL POLICY GUIDELINES FOR THE VALUATION OF CITY RIGHT-OF-WAY PROPOSED TO BE VACATED

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**ISSUE:** How to value City right-of-ways proposed to be vacated.

**RECOMMENDATION:** That City Council adopt the attached policy guidelines for the valuation of proposed vacations of City right-of-way, effective for any vacation approved by Council on or after the date on which the guidelines are adopted (Attachment 1).

**DISCUSSION:** On October 7, at a Planning Commission meeting when the development project at 800 South Washington Street and a related right-of-way vacation were being considered, and on November 15, at a City Council meeting when the vacation of a City right-of-way on Franklin Street adjacent to 700 South Royal Street was being considered, questions were raised about the City's existing policy, adopted in 1987 (Attachment 2), regarding the valuation of right-of-ways proposed to be vacated and sold by the City to private parties. This memorandum and its attachments explain the City's current policy and the proposed new policy.

When an applicant requests the City to vacate a public right-of-way, staff undertakes a review to determine whether or not to recommend vacation of the right-of-way. The current process for consideration of vacation requests is detailed in Attachment 2. Under the proposed new policy set out in Attachment 1 this process would not be changed with the exception of how the valuation of vacated areas would be undertaken.

Where a right-of-way is proposed to be vacated, the City can either prohibit or allow (with or without conditions) the additional development potential that is created by the vacation. These alternatives and the manner in which the vacated area will be valued are described in Attachment 1. We propose that this new vacation policy be effective on the date of Council approval of the new policy.

At its November 15 public hearing meeting Council asked staff to address whether or not funds received from vacations should be placed in the City's open space fund. In recent years, these

proceeds have been deposited in the City's Capital Projects Fund. Staff recommends that we continue this policy, which has the effect of using the one-time proceeds from the sale of a City asset to fund other City capital assets. These other assets could include City buildings, infrastructure or open space. Not dedicating the proceeds to a specific capital purpose at the time of the vacation and placing these funds in the Capital Projects Fund allows the proceeds to be used for priority capital projects which are determined annually by Council through the Capital Improvement Program Budget process.

**ATTACHMENTS:**

- Attachment 1. Proposed General Policy for the Valuation of City Right-of-Way Proposed to be Vacated
- Attachment 2. City Manager memorandum dated November 4, 1987 to City Council related to the process for estimating the value of right-of-way to be vacated
- Attachment 3. TES memorandum dated February 8, 2002 to the City Manager related to the process used to determine if a vacation would be recommended
- Attachment 4. Department of Real Estate Assessments memorandum of November 25, 2003 to the Planning Commission related to the valuation of right-of-way for the proposed 800 South Washington Street development

**STAFF:**

Cindy Smith-Page, Director, Real Estate Assessments  
Barbara Ross, Deputy Director, Planning and Zoning

**Proposed General Policy for the Valuation of Vacated City Right-of-Ways**

This policy addresses two methods for valuing City rights-of-way which are vacated. One method applies when a right-of-way is vacated but the deed conveying the vacated area expressly withholds the conveyance of any use, density or other development rights that would otherwise arise from the vacated land. The second applies when a right-of-way is vacated and the deed of conveyance contains no such withholding of development rights, though it might contain one or more conditions affecting such rights. Both methods are intended to determine the fair market value of the vacated right-of-way area.

**(1) Vacation of Right-of-Way with No Development Rights:** If the City staff determines that a right-of-way is not needed for public purposes, but that no use, density or other development rights should arise from the vacation, then it will recommend to the Planning Commission and City Council that the right-of-way be vacated, but that the applicant not be allowed to build on the property vacated, and not be allowed to utilize any density or other development rights associated with the vacated land area. In this situation, the applicant will agree to have this development prohibition written in the deed that conveys the vacated right-of-way property. This deed restriction will transfer with the property to future owners, if the property is sold.

In this situation, the valuation process will be similar to the process used for the valuation of open space easement properties. The City will determine the assessed land values of nearby surrounding properties with similar zoning and will then apply a discount of 80 percent to those values in order to determine the price that the applicant will be charged for the vacated right-of-way. The 80 percent reduction in value is based on the fact that the applicant has given up, for all future owners of the vacated area, a large portion of the "bundle of rights" inherent in the ownership of the real property. As such, the price to acquire the right-of-way land is based on a reduced value, and future real estate assessments will also reflect the fact that the development rights associated with the vacated land have been given up. The discount of 80 percent is what the City's Department of Real Estate Assessments generally uses for open space assessments and is subject to change depending on the annual data on market sales of properties with open space restrictions.

**(2) Vacation of Right-of-Way with Full or Conditioned Development Rights:** If the staff recommends that a right-of-way be vacated, and that the applicant be allowed to utilize (with or without conditions) the density and other development rights associated with the vacation, then the applicant will be required to pay the fair market value for the vacated area. The fair market value of the vacated area will be based upon the value which the vacated area, when combined with the applicant's existing adjacent land area, causes to be added to the sum of the values of the vacated and existing areas immediately before the vacation.

There are many potential considerations an appraiser would be asked to take into consideration in this valuation of the vacated right-of-way. These include:

- 1) if the combined property is proposed to be rezoned;
- 2) the different or enhanced land use capabilities of the combined property (e.g.,

- potential subdivision);
- 3) the size and shape of the combined property, which could potentially affect the applicable floor area ratio, frontage requirements, height restrictions, and configuration of the proposed development of the property;
  - 4) if the vacated area adds to the utility or acceleration of development on the combined property;
  - 5) if the vacated area vacation creates assemblage and/or plottage value;
  - 6) other factors which may create value.

It should be noted that numbers 1, 2 and 3 above represent the City's policy since 1987, and numbers 4, 5 and 6 represent additions to the policy made in 2003 and allow more elements to be considered in the valuation process which may result in higher valuations in certain cases. It should also be noted that the appraisal considerations under this policy do not reflect "hold out value," which represents the City being the last (or near last) to sell and thereby seeking to get a value excessively above fair market price for its property.

Where a vacation will significantly increase development rights, the City will seek an outside appraisal of the property to be vacated. Once an appraisal is received by the City, the right-of-way sale price will be negotiated by staff in the Office of Management and Budget. A vacation and sale price recommendation will then be made by City staff to the Planning Commission. The Planning Commission will make a decision based on that staff recommendation, and make its own recommendation to City Council, which shall make a decision on the request.

Adopted by City Council on

Date: \_\_\_\_\_

City of Alexandria, Virginia <sup>30</sup>/<sub>12-12-87</sub>

ATTACHMENT 3

27a  
11-10-87  
(11)

## MEMORANDUM

DATE: NOVEMBER 4, 1987

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: VOLA LAWSON, CITY MANAGER *Vola Lawson*

SUBJECT: PROPOSED GENERAL ~~PROCEDURES~~ <sup>A PROCESS</sup> FOR ESTIMATING THE VALUE TO THE CITY OF RIGHT-OF-WAY TO BE VACATED AND THE ESTIMATED FAIR MARKET VALUE FOR THE RIGHT-OF-WAY TO BE VACATED AT 301 SOUTH REYNOLDS STREET

ISSUE: <sup>Process</sup> ~~Procedures~~ for estimating the value to the City of right-of-way to be vacated and the estimated fair market value of the right-of-way to be vacated at 301 South Reynolds Street.

RECOMMENDATIONS: That City Council: (1) adopt the following as <sup>the</sup> general ~~procedures~~ <sup>process</sup> for determining the value of right-of-way to be vacated:

When City Council deems it necessary that a right-of-way be purchased by any abutting property owners or owners requesting a vacation, the selling price be determined after considering an estimate of fair market value as submitted by the Director of Real Estate Assessments.

In preparing an estimate, the Director will follow <sup>this process:</sup> these procedures:

- \* Report to City Council the estimated fair market value of the right-of-way to be vacated as of the date of the filing of the application to vacate.
- \* Determine the estimated fair market value for the right-of way to be vacated by using the before-and-after rule as applied to the larger parcel. While this may not be possible under every circumstance, the reasoning for exception to this procedure must be supported by the Director's report.
- \* Use, as an indication of value, the real estate assessment for abutting land except where there has been, in the opinion of the Director, a marked change in value by reason of rezoning, a change in land use capabilities, sudden changes in real estate values, or similar conditions which can be supported by the Director's report. In the case of an exception as described, every attempt will be made to determine an estimate of fair market value by analyzing the assessed value of land which is similar in zoning, land use capabilities, and other characteristics.

City Council 11-10-87

(2) Place the fair market value of the property to be vacated at 301 South Reynolds Street at \$14,300 pursuant to the methodology applied and discussed in this memorandum.

(12)

DISCUSSION: At the continuation of the September 12th public hearing on September 22, 1987, Mr. Henry Thomas, attorney representing the Lofts Limited Partnership, questioned the Planning Commission action requiring that the applicant pay the City \$19,600 for the right-of-way to be vacated at 301 South Reynolds Street. He further stated that he felt \$3.00 per square foot of land area (\$7,400) was a more reasonable value for open space land. The staff report to the Planning Commission included the recommendation that the applicant pay the City \$19,600 for the vacated right-of-way as determined by the Director of Real Estate Assessments.

During the course of the Council public hearing, several issues were raised with respect to (1) this particular right-of-way; and (2) the City's procedure for selling rights-of-way in general. Council requested that a report be prepared that would explain our procedures.

Value to be Estimated

In order to place into proper perspective the type of value to be estimated for a right-of-way to be vacated, it is necessary to consider the following:

- (1) the City typically pays fair market value when it acquires property for right-of-way purposes;
- (2) the grantor of an open-space easement to the City typically seeks local, state, and federal tax reductions based upon the loss in fair market value; and
- (3) most governmental references to real estate acquisition, compensation, disposition, exchange, interest, taxation, or transfer use fair market value as a basis.

Therefore, the type of value to be estimated should be fair market value. The fair market value of property is defined by the Supreme Court of Virginia as "the price which it will bring when it is offered for sale by one who desires, but is not obligated, to sell it, and bought by one who is under no necessity of having it."

While it is true that the current real estate assessment of abutting or adjacent property should reflect the fair market value, this may not be the case for several reasons:

- \* The current real estate assessment has a different valuation date. The real estate assessment reflects the fair market value as of January 1st each year. The valuation date for right-of-way to be vacated should be the date of the filing of the application for vacation. The Charter of the City of Alexandria (Chapter 13, Acquisition of Property for Public Purposes, Sec. 13.03) states, "--- the date of valuation shall be the time of the lawful taking by the petitioner, or the date of the filing of the petition in condemnation, which ever occurs first."
- \* The abutting property may have been rezoned since the last real estate assessment date.
- \* The land use capabilities for the abutting property may have changed with respect to height restrictions, density, and other regulations or restrictions, since the last assessment date.
- \* The physical size and shape of the parcel would change from that originally assessed if the vacated right-of-way is added to the abutting property. Since several requirements by zoning are based upon lot area, frontage, floor area ratio, and units allowed per acre the size and shape may have a marked effect on fair market value.
- \* While the Office of Real Estate Assessments is required to reflect, as accurately as possible within the context of the City budget, fair market value in all its assessment determinations, the Virginia Constitution, the Code of Virginia and the Alexandria City Code also require uniformity. Therefore, an individual real estate assessment is the result of considering accuracy as it relates to fair market value and the standard of uniformity.

Value to be Agreed Upon

The Code of Virginia (15.1-366. Sale of public streets, alleys, easements, etc., to certain purchasers) states:

"Any county, city or town, notwithstanding any contrary provision of general or special law, may require its streets, alleys, easements or other public ways be purchased by any abutting property owner or owners requesting such government to vacate same as a condition to such vacation; and provided that the parties agree as to the value of such property or easement. (Emphasis added.)"

(14)

Again referring to the Charter of the City of Alexandria (Sec. 13.03) as to eminent domain, several references are made to "compensation," which when viewed in conjunction with the Virginia Constitution requires payment of "just compensation" for the taking of private property for public use.

Just compensation is defined as "the amount of loss for which a property owner has established a claim to compensation. It is the payment of the market value of the real estate which was taken" (Real Estate Appraisal Terminology, p.121).

Market value, however, is not an end in itself, but merely a measure to an end; the objective being (1) the ascertainment of just compensation in the case of eminent domain; (2) a beginning point for negotiation with the abutting property owner; or (3) a recommendation to City Council where Council requires a right-of-way be purchased by an abutting owner as a condition to vacate.

I have mentioned eminent domain only as a point of comparison--buying for public use rather than selling--this is not to imply that City Council is controlled by these eminent domain references.

Identification of the Property to be Valued

In the case of the sale of a street, alley, easement, or other public right-of-way the fair market value should be measured as the value of the abutting parcel after vacating the right-of-way minus the value of the abutting property before vacating the right-of-way.

Value of property after vacation	\$ _____
Value of property before vacation	- \$ _____
Difference (fair market value)	= \$ _____

A derivation of this formula is used in measuring just compensation in eminent domain litigation (before-and-after rule) and when determining the value of an easement as a charitable contribution for personal income tax purposes (Federal Income Tax Regulations, 1.170A-14 (H) (3)).

In eminent domain litigation there is a considerable amount of conflicting law in regard to whether the value of the part taken for right-of-way purposes should be valued as a part of the whole property or as a separate entity. However, "[i]f the appraiser properly analyzes the highest and best use of the property and the question of what constitutes the larger parcel, this inconsistency can be largely alleviated" (Real Estate Valuation Litigation, p.26).

Larger parcel is defined as "that portion of a property which has unity of ownership, contiguity, and unity of use. These are the three conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance damage

in most states" (Real Estate Appraisal Terminology, p.126).

Past Procedure for Vacated Right-of-Way

As Mr. Thomas stated at the public hearing, prior to 1979 an abutting property owner was not required to purchase vacated right-of-way from the City.

According to Mr. Thomas, since 1979 the City's past practice has been to set the required purchase price at an amount equal to the assessed value for abutting property.

The Director of Transportation and Environmental Services has typically used the assessment of adjacent property as a recommendation, where the right-of-way itself did not have an assessment. In the case of 301 South Reynolds, however, the current real estate assessment reflects the estimated fair market value, as of January 1, 1987, of three vacant parcels zoned R8, Residential and one improved residential parcel also zoned R8, Residential. Since the assessment date, these four separate parcels have been assembled under one ownership, rezoned to RC, Residential, and the residential structure removed. This situation prompted Mr. Cook to seek an updated estimate of value.

Application of Valuation Method Recommended

Applying the proposed general procedures for estimating the value to the City of the right-of-way to be vacated at 301 South Reynolds results in an estimate of fair market value of Fourteen Thousand Three Hundred (\$14,300) Dollars.

Value of property after vacation	\$ 262,500
Value of property before vacation	- \$ 248,200
Difference (fair market value)	\$ 14,300

Valuation date: May 22, 1987 the date the application for vacation was filed by The Lofts Limited Partnership.

Indications of value: (Because the property at 301 South Reynolds has had a marked change in value by reason of rezoning, the consolidation of four parcels, and the removal of the dwelling, comparable land assessments will be used to estimate fair market value.)

Comparable Land Assessments

<u>Map-Block-Lot Location</u>	<u>Zoning</u>	<u>Sq. Ft. Size</u>	<u>1987 Land Assessment</u>	<u>Assessment Per Sq. Ft.</u>
048.00-01-15 299 Ripley	RC	19,220	\$ 123,600	\$ 6.43
057.00-02-01-04 300 Yoakum	RC	20,470	\$ 102,300	\$ 5.00
057.00-04-10 333 Reynolds	RC	73,207	\$ 475,800	\$ 6.50

Range of Indications: \$5.00 to \$6.50 per square foot of land area.

Assessments for Subject Property

<u>Assessment Map-Block-Lot</u>	<u>Previous Zoning</u>	<u>Current Zoning</u>	<u>Sq.Ft. Size</u>	<u>1987 Land Assessment</u>	<u>Assessment Per Sq. Ft.</u>
57.00-04-11	R8	RC	12,354	\$ 50,600	\$ 4.10
57.00-04-12	R8	RC	4,516	\$ 11,300	\$ 2.50
57.00-04-13	R8	RC	16,500	\$ 41,000	\$ 2.50
58.01-01-02	R8	RC	8,000	\$ 24,000	\$ 3.00
			<u>41,370</u>		

Indication of Value After Vacation:

Land Area	41,370 sq. ft. (all four parcels as one ownership)
	- 66 sq. ft. dedicated for street
	<u>+2,453 sq. ft. to be vacated</u>
Unit Value	43,757 sq. ft. comparable land assessment
	x \$6.00
	<u>\$262,500</u>

Indication of Value Before Vacation:

Land Area	41,370 sq. ft. (all four parcels as one ownership)
Unit Value	x \$6.00 comparable land assessment
	<u>\$248,200</u>

Staff: Richard Sanderson, Director  
Real Estate Assessments  
Dayton Cook, Director  
Transportation and Environmental Services

Attachment:

Attachment 1 - Plat of vacation



*City of Alexandria, Virginia*

## MEMORANDUM

DATE: FEBRUARY 8, 2002

TO: PHILIP SUNDERLAND, CITY MANAGER

FROM: RICHARD J. BAIER, P.E., DIRECTOR, TRANSPORTATION AND ENVIRONMENTAL SERVICES

SUBJECT: VACATION OF PUBLIC RIGHT-OF-WAY

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As requested by Councilwoman Claire Eberwein at a City Council meeting in June of last year, T&ES staff was asked to review the City's process and criteria for vacation of public right-of-way. We took a look at our procedure and also reviewed the vacation policies of other cities around the state and the country, in terms of the criteria used to determine whether the vacation of public right-of-way is appropriate. Our criteria are very similar to all of the other cities we reviewed, and our procedure is discussed below.

The City's procedure for vacation of public rights-of-way consists of an application and public hearing process that is administered by the Department of Planning & Zoning and is allowed under Article 2 of the Code of Virginia (see attachment 1).

The Department on Planning & Zoning distributes the vacation application to other City agencies (primarily the Departments of T&ES and Parks & Rec) for review, to determine whether the right-of-way is still needed for a public purpose and if vacation of this right-of-way will have an adverse public effect.

The departments use the following criteria to determine if vacation of public right-of-way is reasonable:

- There is no public use of the right-of-way at the time that the application is submitted.
- No reasonable use of the right-of-way could exist in the future, either for its original purpose or for some other public purpose. Reasonable use includes but is not limited to future roads, bike paths/trails, recreational facilities, open space, utilities, or environmental protection.
- No portion of public right-of-way shall become landlocked.
- No abutting property owner shall become landlocked or have access substantially impaired.
- The vacation shall provide a public benefit.

If a vacation request is found to be reasonable, conditions may be placed on the vacation to meet the following policy requirements:

- A uniform right-of-way width must be maintained.
- Minimum right-of-way width allowed is 50 feet. This is in accordance with City Code Section 5-2-4.
- Easements must be provided for all existing public and private utilities within the area to be vacated.
- Vacated right-of-way is to be consolidated with the adjoining lots.
- The value of the vacated right-of-way will be determined by the Director of Real Estate Assessments.
- Alley vacations must consist of the full width and no land locked portions of the alley will be allowed to remain.

Each reviewing department submits comments and recommendations to the Department of Planning & Zoning who then compiles a staff report and recommendation. The vacation request is docketed for review by the Planning Commission and City Council. The City Council appoints Viewers to review the request and submit a report back to the City Council. After receiving the Viewers' report, the Council introduces an ordinance for first and second reading, and final passage (see attachment 2).

The City does not have a published guideline for determining whether to support an application for vacation of public right-of-way. Staff follow the criteria discussed above in making a recommendation to the Planning Commission and City Council in the staff report. The Viewers are issued a letter from the Clerk of the Council and requested to determine if any inconvenience or harm to the public would result from discontinuing and vacating the public right-of-way use of this property (see attachment 3).

In most cases, if the City staff object to a vacation of public right-of-way, the applicant is notified by either the Planning & Zoning staff or the Chief of Surveys, and will elect to withdraw the application from consideration. For this reason, it is rare that a vacation request will proceed to the Planning Commission and City Council without the support of staff. However, in those few cases, it would be helpful to the Planning Commission and Council, as well as the Viewers, to have a published guideline, developed by City staff, which explains the criteria discussed above. This will serve as a general guide and allow the Commission, Council and Viewers to better understand the process used by staff in determining a recommendation.

I recommend that the Chief of Surveys work with the Planning and Zoning staff and other appropriate City agencies to prepare a memo to City Council and Planning Commission, outlining the criteria set forth above. This memo should serve as the Vacation Guidelines, and should be distributed to all Viewers at the time they are requested to view a request for vacation.

I will be happy to discuss these policies and criteria further with you at your convenience.

Attachments: #1 Code of Virginia, Article 2

#2 Vacation process flowchart

#3 Sample letter of instructions to viewer

§ 15.2-2006

CODE OF VIRGINIA

§ 15.2-2007.1

land lying in any city or town which belongs to the Commonwealth, without first obtaining the consent of the General Assembly, anything in the charter or ordinances of any city or town to the contrary notwithstanding.

Nothing herein shall be construed as interfering in any way with the present or future plans of any cities or towns in regard to the location and maintenance of sewerage and surface drainage on or through such properties when submitted to and approved by the Governor. (Code 1950, § 15-773; 1962, c. 623, § 15.1-374; 1997, c. 587.)

## ARTICLE 2.

*Vacation, etc., of Public Rights-of-Way.*

§ 15.2-2006. Alteration and vacation of public rights-of-way; appeal from decision. — In addition to (i) the powers contained in the charter of any locality, (ii) any powers now had by such governing bodies under the common law or (iii) powers by other provisions of law, public rights-of-way in localities may be altered or vacated on motion of such governing bodies or on application of any person after notice of intention to do so has been published at least twice, with at least six days elapsing between the first and second publication, in a newspaper having general circulation in the locality. The notice shall specify the time and place of a hearing at which persons affected may appear and be heard. The cost of publishing the notice shall be taxed to the applicant. At the conclusion of the hearing and on application of any person, the governing body may appoint three to five people to view such public right-of-way and report in writing any inconvenience that would result from discontinuing the right-of-way. The governing body may allow the viewers up to fifty dollars each for their services. The sum allowed shall be paid by the person making the application to alter or vacate the public right-of-way. From such report and other evidence, if any, and after the land owners affected thereby, along the public right-of-way proposed to be altered or vacated, have been notified, the governing body may discontinue the public right-of-way. When an applicant requests a vacation to accommodate expansion or development of an existing or proposed business, the governing body may condition the vacation upon commencement of the expansion or development within a specified period of time. Failing to commence within such time may render the vacation, at the option of the governing body, void. A certified copy of the ordinance of vacation shall be recorded as deeds are recorded and indexed in the name of the locality. A conditional vacation shall not be recorded until the condition has been met.

Any appeal shall be filed within sixty days of adoption of the ordinance with the circuit court for the locality in which the public right-of-way is located. (Code 1950, § 15-766; 1950, p. 725; 1952, c. 580; 1956, c. 487; 1958, c. 196; 1962, c. 623, § 15.1-364; 1964, c. 13; 1972, c. 357; 1973, c. 71; 1980, c. 236; 1982, c. 381; 1983, c. 33; 1984, c. 175; 1986, c. 41; 1997, c. 587.)

§ 15.2-2007. Fee for processing application under § 15.2-2006. — The governing body of any locality may prescribe and charge a reasonable fee not exceeding \$100 for processing an application pursuant to § 15.2-2006. (1970, c. 161, § 15.1-364.1; 1976, c. 183; 1979, c. 208; 1997, c. 587.)

§ 15.2-2007.1. Appointment of viewers in certain cities. — Notwithstanding the provisions of § 15.2-2006, any city with a population greater than 350,000 may by ordinance appoint three to five viewers for terms of one year to view each and every street or alley proposed to be altered or vacated during the term. The notice requirements of § 15.2-2204 shall be complied with for each hearing regarding discontinuance of the street or alley proposed to be

§ 15.2-2008

COUNTIES, CITIES AND TOWNS

§ 15.2-2009

altered or vacated. The applicant for closure of streets or alleys in such cities that have appointed viewers pursuant to this section shall not be required to advertise, and the governing body shall not be required to hold a separate hearing, for appointment of viewers for each specific street or alley proposed to be altered or vacated. The applicant and the governing body of such city shall comply with all other provisions of § 15.2-2006. (1997, c. 742, § 15.1-364.2.)

Editor's note. — This section was enacted by Acts 1997, c. 742. Pursuant to Acts 1997, c. 587, cl. 6, this section has been incorporated into Title 15.2 as § 15.2-2007.1.

§ 15.2-2008. Sale of public rights-of-way, easements, etc., to certain purchasers. — Notwithstanding any contrary provision of law, general or special, any locality, as a condition to a vacation or abandonment, may require the fractional portion of its public rights-of-way and easements to be purchased by any abutting property owner. The price shall be no greater than the property's fair market value or its contributory value to the abutting property, whichever is greater, or the amount agreed to by the parties. No such vacation or abandonment shall be concluded until the agreed price has been paid. If any abutting property owner does not pay for such owner's fractional portion within one year, or other time period made a condition of the vacation or abandonment, of the local government action to vacate or abandon, then the vacation or abandonment shall be void as to any such property owner. (1979, c. 241, § 15.1-366; 1985, c. 276; 1992, c. 362; 1993, c. 343; 1997, c. 587.)

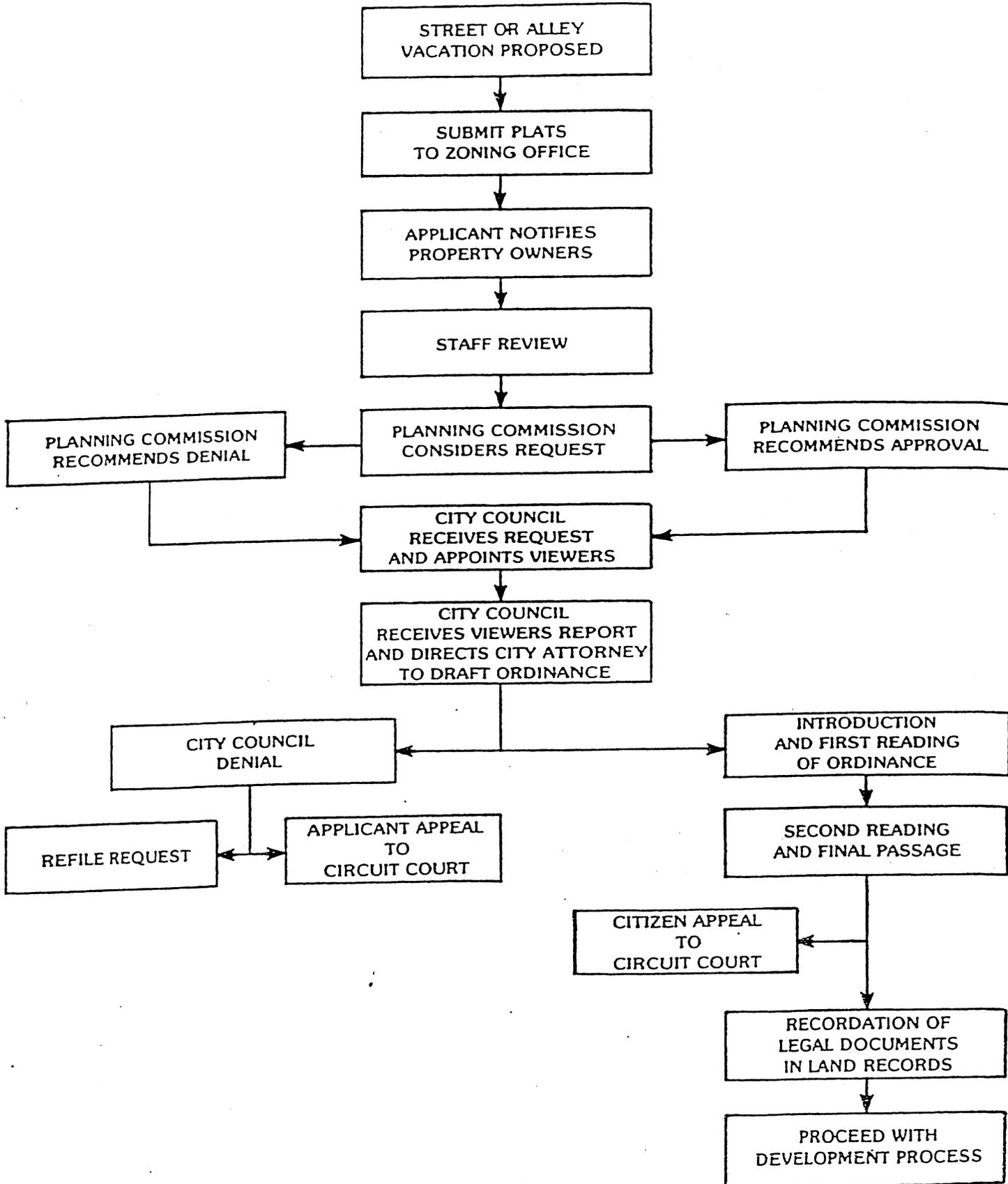
Law Review. — For survey of Virginia law on property for the year 1978-1979, see 66 Va. L. Rev. 359 (1980).

### ARTICLE 3.

#### *Encroachments on Rights-of-Way, etc.*

§ 15.2-2009. Obstructions or encroachments. — A locality may prevent any unlawful obstruction of or encroachment over, under or in any street, highway, road, alley, bridge, viaduct, subway, underpass or other public right-of-way or place; may provide penalties for maintaining any such unlawful obstruction or encroachment; may remove the same and charge the cost thereof to the owner or occupant of the property so obstructing or encroaching; and may collect the cost in any manner provided by law for the collection of state or local taxes. The locality may require the owner or occupant of the property so obstructing or encroaching to remove the property and, pending such removal, may charge the owner of the property so obstructing or encroaching compensation for the use of such portion of the street, highway, road, alley, bridge, viaduct, subway, underpass or other public right-of-way or place obstructed or encroached upon the equivalent of what would be the tax upon the land so occupied if it were owned by the owner of the property so obstructing or encroaching. If removal is not accomplished within the time ordered, the locality may impose penalties for each day that the obstruction or encroachment is allowed to continue. The locality may authorize encroachments upon such public rights-of-way and places subject to such terms and conditions as the governing body may prescribe. However, owners or occupants shall be liable for negligence on account of such encroachment, and the governing body may institute and prosecute a suit or action in ejectment or other appropriate proceedings to recover possession of any such public right-of-way or place or any other property unlawfully occupied or encroached upon. (Code 1950, § 15-77.57; 1958, c. 328; 1962, c. 623, § 15.1-893; 1997, c. 587.)

# The Vacation Process





City of Alexandria, Virginia  
301 King Street, Suite 2300  
Alexandria, Virginia 22314



Kerry J. Donley  
Mayor

William C. Cleveland  
Vice Mayor

June 18, 2001

Beverly I. Jett, C  
City Clerk and  
Clerk of Council  
beverly.jett@ci.alexand

(703) 838-4550  
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Members of Council  
Claire M. Eberwein  
William D. Euille  
Redella S. Pepper  
David G. Speck  
Joyce Woodson

Mr. Rodger Digilio, Chair  
1900 Mt. Vernon Avenue  
Alexandria, VA 22301

Re: Consideration of a request for a vacation of the public right-of-way, 1601 Chapel Hill Drive, Alexandria, VA

Dear Mr. Digilio:

Pursuant to authorization given to Mayor Donley by the City Council at its Public Hearing Meeting on June 16, 2001, you, as Chairman, together with Mr. Ross Bell, and Mr. Bill Brandon, were appointed as viewers to view the public right-of-way property described in the attached pages and to report in writing whether in the viewers' opinion any inconvenience or harm to the public would result from discontinuing and vacating the public right-of-way use of this property. I have enclosed a sample viewers' report. For further information concerning this matter, you may contact the Director of the Department of Planning and Zoning.

If possible, would you please have your report, signed by all three viewers, in the Office of the City Clerk on or before Monday, June 25, 2001.

Please bill Duncan W. Blair, Esquire, Land, Clark, Carroll, Mendelson & Blair, P.C., 112 South Alfred St., Suite 300, Alexandria, Virginia 22314. IF payment is not made within thirty (30) days, please advise the City Clerk at 838-4550.

Sincerely,

Beverly I. Jett, CMC  
City Clerk and Clerk of Council

Enclosures: Docket Item No. 21  
Sample Viewers' Report  
Mr. Ross Bell, 703-836-2001  
Mr. Bill Brandon, 703-683-0927

City of Alexandria, Virginia CITY MANAGER'S OFFICE  
ALEXANDRIA, VA

MEMORANDUM

2003 NOV 26 P 12:36

DATE: NOVEMBER 25, 2003

TO: PLANNING COMMISSION

FROM: CINDY SMITH-PAGE, DIRECTOR *CS*  
DEPARTMENT OF REAL ESTATE ASSESSMENTS

SUBJECT: VACATION #2003-003  
801-833 SOUTH WASHINGTON STREET, 712 JEFFERSON STREET, AND  
806-828 SOUTH COLUMBUS STREET

I would like to first personally apologize for not being present at the Planning Commission Meeting on October 7 to answer any questions the Commission had at that time regarding my department's estimate of value of the right-of-way to be vacated. Commission Chair Wagner mentioned that the Commission does not always receive these estimates when a vacation occurs. Based upon City Council's adoption of right-of-way vacation policies in 1987 (Attachment I), Real Estate Assessments (REA) has given an estimate of the value of the right-of-way to be vacated. However, if it is not a complicated value conclusion, REA does not always write a memorandum of explanation.

In the future, a valuation memorandum will be included in Planning Commission Docket materials. This memorandum, along with a Real Estate Staff person, knowledgeable about the valuation, will be present at the Planning Commission meetings to answer questions.

**BACKGROUND:** On November 10, 1987 City Council adopted a general process for estimating the value to the City of right-of-ways to be vacated. In summary, the procedure adopted calls for the Director of Real Estate Assessments to estimate the fair market value and as part of the estimate to apply the before-and-after rule as applied to the larger parcel. The procedure also requires the Director to use as an indication of value, the real estate assessment for abutting land, except where there has been, in the opinion of the Director a marked change in value by reason of rezoning, a change in land use capabilities, sudden changes in real estate values, or similar conditions which can be supported by the Director's report. Therefore, the type of value to be estimated should be fair market value.

The fair market value of property is defined as "the price which it will bring when it is offered for sale by one who desires, but is not obligated, to sell it, and bought by one who is under no necessity of having it." In the case of the 800 South Washington Street development, the

Washington Real Estate Investment Trust (WRIT) has a necessity as it needs the City's right of way (i.e., the alley) to fully assemble the parcels it has purchased in order to achieve its desired development.

The procedure, as adopted in 1987, states "while it is true that the current real estate assessment of abutting or adjacent property should reflect fair market value, this may not be the case for several reasons." One of the reasons which would apply to the case of the above- referenced vacation is "the physical size and shape of the parcel would change from that originally assessed if the vacated right-of-way is added to the abutting property. Since several zoning requirements are based upon lot area, frontage, floor area ratio, and units allowed per acre, the size and shape (after the vacated right-of-way is added to the parcel) may have a marked effect on fair market value."

Opinion of Ballot: In the case of Washington Real Estate Investment Trust (WRIT) the \$430,800 REA valuation conclusion made in July- 2003 (Attachment I) did not include any value attributable to the transfer of 14,994 square feet of development from the Washington Street side (east side) to the Columbus Street side (west side) of the development block. This transfer is allowed under the Zoning ordinance only if the public alley is vacated. It is my opinion that the additional value of this transfer of density, 14,994 square feet, and it's planned utilization as a result of the alley vacation, is \$300,000. The additional amount of \$300,000 was determined by applying \$40 per FAR to the 14,994 square feet equaling \$599,760 (rounded \$600,000). It is the opinion of REA that the appropriate amount to apply to the transfer of density would be fifty percent of \$600,000, or \$300,000. The value added is not 100% (or \$600,000) because this density has value in it's current location at some point in the future, if the existing retail site were to be redeveloped. However, the owner is able to achieve the highest density for the entire site at this time due to the acquisition of the alley, in turn allowing for the transfer of the density. The original \$430,800 estimate did not include any value adjustment as a result of the ability of the applicant to transfer and use at this time the density from the east to the west side of the development. Therefore, the market value attributable to the vacation of the 7,180 square foot alley is \$730,800 (\$430,800 plus \$300,000). In this case, WRIT was able to achieve, as a result of the vacation, an overall development parcel that was different in nature and in value than the sum of the individual lots or pieces.

On October 7, Planning Commission raised some very good points regarding the determination of the fair market value of this right-of-way. City staff are currently writing a docket item to be considered by City Council on December 8, which will create a policy for the City to use when determining the appropriate dollar amount of any right-of-way that is to be vacated.

Attachment 1 - November 4, 1987 Docket item to The Honorable Mayor and Members of City Council

Attachment 2 - July 12, 2003 from the Department of Real Estate Assessments to the Department of Planning and Zoning

cc: Mark Jinks, Assistant City Manager  
Eileen Fogarty, Director, Planning & Zoning  
Barbara Ross, Deputy Director, Planning & Zoning  
Jeffrey Farner, Division Chief, Planning & Zoning

City of Alexandria, Virginia <sup>30</sup>/<sub>12-12-87</sub>

27a  
11-10-87  
(11)

ATTACHMENT 3

MEMORANDUM

DATE: NOVEMBER 4, 1987

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: VOLA LAWSON, CITY MANAGER *Vola Lawson*

SUBJECT: PROPOSED GENERAL <sup>A PROCESS</sup> PROCEDURES FOR ESTIMATING THE VALUE TO THE CITY OF RIGHT-OF-WAY TO BE VACATED AND THE ESTIMATED FAIR MARKET VALUE FOR THE RIGHT-OF-WAY TO BE VACATED AT 301 SOUTH REYNOLDS STREET

ISSUE: <sup>Process</sup> ~~Procedures~~ for estimating the value to the City of right-of-way to be vacated and the estimated fair market value of the right-of-way to be vacated at 301 South Reynolds Street.

RECOMMENDATIONS: That City Council: (1) adopt the following as <sup>process</sup> ~~general procedures~~ for determining the value of right-of-way to be vacated:

When City Council deems it necessary that a right-of-way be purchased by any abutting property owners or owners requesting a vacation, the selling price be determined after considering an estimate of fair market value as submitted by the Director of Real Estate Assessments.

In preparing an estimate, the Director will follow <sup>this</sup> ~~these~~ <sup>process:</sup> ~~procedures:~~

- \* Report to City Council the estimated fair market value of the right-of-way to be vacated as of the date of the filing of the application to vacate.
- \* Determine the estimated fair market value for the right-of way to be vacated by using the before-and-after rule as applied to the larger parcel. While this may not be possible under every circumstance, the reasoning for exception to this procedure must be supported by the Director's report.
- \* Use, as an indication of value, the real estate assessment for abutting land except where there has been, in the opinion of the Director, a marked change in value by reason of rezoning, a change in land use capabilities, sudden changes in real estate values, or similar conditions which can be supported by the Director's report. In the case of an exception as described, every attempt will be made to determine an estimate of fair market value by analyzing the assessed value of land which is similar in zoning, land use capabilities, and other characteristics.

(2) Place the fair market value of the property to be vacated at 301 South Reynolds Street at \$14,300 pursuant to the methodology applied and discussed in this memorandum. (12)

DISCUSSION: At the continuation of the September 12th public hearing on September 22, 1987, Mr. Henry Thomas, attorney representing the Lofts Limited Partnership, questioned the Planning Commission action requiring that the applicant pay the City \$19,600 for the right-of-way to be vacated at 301 South Reynolds Street. He further stated that he felt \$3.00 per square foot of land area (\$7,400) was a more reasonable value for open space land. The staff report to the Planning Commission included the recommendation that the applicant pay the City \$19,600 for the vacated right-of-way as determined by the Director of Real Estate Assessments.

During the course of the Council public hearing, several issues were raised with respect to (1) this particular right-of-way; and (2) the City's procedure for selling rights-of-way in general. Council requested that a report be prepared that would explain our procedures.

Value to be Estimated

In order to place into proper perspective the type of value to be estimated for a right-of-way to be vacated, it is necessary to consider the following:

- (1) the City typically pays fair market value when it acquires property for right-of-way purposes;
- (2) the grantor of an open-space easement to the City typically seeks local, state, and federal tax reductions based upon the loss in fair market value; and
- (3) most governmental references to real estate acquisition, compensation, disposition, exchange, interest, taxation, or transfer use fair market value as a basis.

Therefore, the type of value to be estimated should be fair market value. The fair market value of property is defined by the Supreme Court of Virginia as "the price which it will bring when it is offered for sale by one who desires, but is not obligated, to sell it, and bought by one who is under no necessity of having it."

While it is true that the current real estate assessment of abutting or adjacent property should reflect the fair market value, this may not be the case for several reasons:

- \* The current real estate assessment has a different valuation date. The real estate assessment reflects the fair market value as of January 1st each year. The valuation date for right-of-way to be vacated should be the date of the filing of the application for vacation. The Charter of the City of Alexandria (Chapter 13, Acquisition of Property for Public Purposes, Sec. 13.03) states, "--- the date of valuation shall be the time of the lawful taking by the petitioner, or the date of the filing of the petition in condemnation, which ever occurs first."
- \* The abutting property may have been rezoned since the last real estate assessment date.
- \* The land use capabilities for the abutting property may have changed with respect to height restrictions, density, and other regulations or restrictions, since the last assessment date.
- \* The physical size and shape of the parcel would change from that originally assessed if the vacated right-of-way is added to the abutting property. Since several requirements by zoning are based upon lot area, frontage, floor area ratio, and units allowed per acre the size and shape may have a marked effect on fair market value.
- \* While the Office of Real Estate Assessments is required to reflect, as accurately as possible within the context of the City budget, fair market value in all its assessment determinations, the Virginia Constitution, the Code of Virginia and the Alexandria City Code also require uniformity. Therefore, an individual real estate assessment is the result of considering accuracy as it relates to fair market value and the standard of uniformity.

Value to be Agreed Upon

The Code of Virginia (15.1-366. Sale of public streets, alleys, easements, etc., to certain purchasers) states:

"Any county, city or town, notwithstanding any contrary provision of general or special law, may require its streets, alleys, easements or other public ways be purchased by any abutting property owner or owners requesting such government to vacate same as a condition to such vacation; and provided that the parties agree as to the value of such property or easement. (Emphasis added.)"

Again referring to the Charter of the City of Alexandria (Sec. 13.03) as to eminent domain, several references are made to "compensation," which when viewed in conjunction with the Virginia Constitution requires payment of "just compensation" for the taking of private property for public use.

Just compensation is defined as "--- the amount of loss for which a property owner has established a claim to compensation. It is the payment of the market value of the real estate which was taken" (Real Estate Appraisal Terminology, p.121).

Market value, however, is not an end in itself, but merely a measure to an end; the objective being (1) the ascertainment of just compensation in the case of eminent domain; (2) a beginning point for negotiation with the abutting property owner; or (3) a recommendation to City Council where Council requires a right-of-way be purchased by an abutting owner as a condition to vacate.

I have mentioned eminent domain only as a point of comparison--buying for public use rather than selling--this is not to imply that City Council is controlled by these eminent domain references.

Identification of the Property to be Valued

In the case of the sale of a street, alley, easement, or other public right-of-way the fair market value should be measured as the value of the abutting parcel after vacating the right-of-way minus the value of the abutting property before vacating the right-of-way.

Value of property after vacation	\$	_____
Value of property before vacation	-	\$ _____
Difference (fair market value)	=	\$ _____

A derivation of this formula is used in measuring just compensation in eminent domain litigation (before-and-after rule) and when determining the value of an easement as a charitable contribution for personal income tax purposes (Federal Income Tax Regulations, 1.170A-14 (H) (3)).

In eminent domain litigation there is a considerable amount of conflicting law in regard to whether the value of the part taken for right-of-way purposes should be valued as a part of the whole property or as a separate entity. However, "[i]f the appraiser properly analyzes the highest and best use of the property and the question of what constitutes the larger parcel, this inconsistency can be largely alleviated" (Real Estate Valuation Litigation, p.26).

Larger parcel is defined as "--- that portion of a property which has unity of ownership, contiguity, and unity of use. These are the three conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance damage

in most states" (Real Estate Appraisal Terminology, p.126).

Past Procedure for Vacated Right-of-Way

As Mr. Thomas stated at the public hearing, prior to 1979 an abutting property owner was not required to purchase vacated right-of-way from the City.

According to Mr. Thomas, since 1979 the City's past practice has been to set the required purchase price at an amount equal to the assessed value for abutting property.

The Director of Transportation and Environmental Services has typically used the assessment of adjacent property as a recommendation, where the right-of-way itself did not have an assessment. In the case of 301 South Reynolds, however, the current real estate assessment reflects the estimated fair market value, as of January 1, 1987, of three vacant parcels zoned R8, Residential and one improved residential parcel also zoned R8, Residential. Since the assessment date, these four separate parcels have been assembled under one ownership, rezoned to RC, Residential, and the residential structure removed. This situation prompted Mr. Cook to seek an updated estimate of value.

Application of Valuation Method Recommended

Applying the proposed general procedures for estimating the value to the City of the right-of-way to be vacated at 301 South Reynolds results in an estimate of fair market value of Fourteen Thousand Three Hundred (\$14,300) Dollars.

Value of property after vacation	\$ 262,500
Value of property before vacation	- \$ 248,200
Difference (fair market value)	\$ 14,300

Valuation date: May 22, 1987 the date the application for vacation was filed by The Lofts Limited Partnership.

Indications of value: (Because the property at 301 South Reynolds has had a marked change in value by reason of rezoning, the consolidation of four parcels, and the removal of the dwelling, comparable land assessments will be used to estimate fair market value.)

(16)

Comparable Land Assessments

<u>Map-Block-Lot Location</u>	<u>Zoning</u>	<u>Sq. Ft. Size</u>	<u>1987 Land Assessment</u>	<u>Assessment Per Sq. Ft.</u>
048.00-01-15 299 Ripley	RC	19,220	\$ 123,600	\$ 6.43
057.00-02-01-04 300 Yoakum	RC	20,470	\$ 102,300	\$ 5.00
057.00-04-10 333 Reynolds	RC	73,207	\$ 475,800	\$ 6.50

Range of Indications: \$5.00 to \$6.50 per square foot of land area.

Assessments for Subject Property

<u>Assessment Map-Block-Lot</u>	<u>Previous Zoning</u>	<u>Current Zoning</u>	<u>Sq.Ft. Size</u>	<u>1987 Land Assessment</u>	<u>Assessment Per Sq. Ft.</u>
57.00-04-11	R8	RC	12,354	\$ 50,600	\$ 4.10
57.00-04-12	R8	RC	4,516	\$ 11,300	\$ 2.50
57.00-04-13	R8	RC	16,500	\$ 41,000	\$ 2.50
58.01-01-02	R8	RC	8,000	\$ 24,000	\$ 3.00
			<u>41,370</u>		

Indication of Value After Vacation:

Land Area      41,370 sq. ft. (all four parcels as one ownership)  
                  -     66 sq. ft. dedicated for street  
                  +2,453 sq. ft. to be vacated

Unit Value      43,757 sq. ft.  
                  x \$6.00 comparable land assessment  
                  \$262,500

Indication of Value Before Vacation:

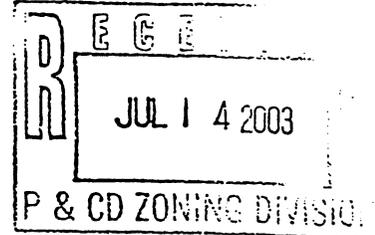
Land Area      41,370 sq. ft. (all four parcels as one ownership)  
                  x \$6.00 comparable land assessment  
                  \$248,200

Staff: Richard Sanderson, Director  
Real Estate Assessments  
Dayton Cook, Director  
Transportation and Environmental Services

Attachment:  
Attachment 1 - Plat of vacation



City of Alexandria, Virginia  
MEMORANDUM



PC Docket Item # 20-A  
VAC 2003-0003

DATE: JULY 12, 2003  
TO: BARBARA ROSS, DEPUTY DIRECTOR  
PLANNING AND ZONING  
THROUGH: CINDY SMITH-PAGE, DIRECTOR CSP  
REAL ESTATE ASSESSMENTS  
FROM: TIM FRANCIS, SENIOR APPRAISER TF  
REAL ESTATE ASSESSMENTS  
SUBJECT: ESTIMATED VALUE OF RIGHT-OF-WAY TO BE VACATED  
APPLICATION FOR VACATION #2003-003

Per your request, I have reviewed the proposed right-of-way to be vacated adjacent to the property of WRIT, LP, on the block formed by South Washington, Jefferson, Columbus and Green Streets. According to the attached legal description, the right-of-way comprises a total land area of 7,180 square feet. Washington Real Estate Investment Trust (WRIT) recently completed the assemblage of all other property on the block, and it appears that they are seeking to consolidate their holding by obtaining a vacation of the public alley. Please refer to Attachment #1 that summarizes the tax map numbers, street addresses, land areas, and 2003 land assessments of the WRIT-owned block.

Our records indicate that WRIT now owns all parcels on the block, with a total site area of 78,393 square feet. However, data provided to your office from the applicant indicates a somewhat larger site area of 87,171 square feet, that includes the proposed alley vacation as well as 10-foot wide private alley, located in the northwest portion of the block. For the purposes of this analysis, we used the data provided by the property owner.

	Assessment Records	Area Tabulation Per Plan
17 Parcels	78,393 sq. ft.	not specified
Area of the Private Alley	not specified	not specified
Right-of Way To be vacated:	not specified	7,180 sq. ft.
Total Proposed Site:	not specified	87,171 sq. ft.

According to the application for preliminary special use permit, the proposed consolidated 87,171 square feet site will be developed as a mixed use development that will include the existing retail uses, underground parking, and 75 apartments on lots that now are used for surface parking.

Based upon my review of current assessment data and subject to the limiting conditions stated later in this memorandum, it is my opinion that the right-of-way to be vacated had an estimated fair market value, as of the date of the application for vacation (June 24, 2003), of:

Four Hundred Thirty Thousand Eight Hundred (\$430,800) Dollars.

I have estimated the value of the right-of-way to be vacated using the latest real estate assessments for the abutting properties. This method employs the process adopted by City Council on November 10, 1987 which attempts to measure the contributory value of the right-of-way as it relates to the larger parcel as-if assembled. Therefore, the appraisal problem can be stated as: What is the incremental difference between the estimated fair market value of 17 separate parcels, and a private alley, and the estimated fair market value of the single larger parcel created by adding the vacated right-of-way?

In this instance, the market would value the land based its anticipated yield, expressed as the relationship between the total area above ground of anticipated development, and the area of the plot on which it is located. The term for this relationship is called the "floor-area ratio", or "FAR". The maximum floor area of development (FAR) permitted by a special use permit (SUP) in the CRMU-L would be 1.50. The January 1, 2003 assessments of the 17 parcels range from \$55.00 per square foot to \$61.00 per square foot (rounded). The higher per square foot assessments were placed on parcels with superior commercial locations along South Washington Street. An overall \$60 per square foot assessment applied to the assemblage results in an FAR value of \$40/SF of building area.

The owners of the properties have applied for a special use permit for a higher yield of 1.50, and their preliminary plans include the now publically owned alley. Therefore, and the additional value attributable to the assemblage will be based on an FAR of 1.50.

Accordingly, the proposed gross building area of the vacated right of way calculated as per the attached plan as follows:

Total Assembled Site: 87,171 square feet X 1.50 sq. ft of FAR = 130,757 sq. ft.

Indication of value for the proposed assembled parcels, including the proposed vacated street:

Potential development: 130,757 sq. ft. of FAR X \$40.00 sq. of FAR = \$5,230,280

Indication of value for the site before adding the vacated right of way:

79,991 sq. ft. of land X 1.5 FAR = 119,987

119,987 SF of GBA X \$40 FAR sq. ft. = 4,799,480

Final estimated contributory value of vacated right-of-way:

Value of property after vacation	\$5,230,280
Value of property before vacation	4,799,480
	-----
Difference	\$430,800

It should be clearly understood that an appraisal has not been made of the subject properties or of the properties abutting the right-of-way. The estimate of value assumes that marketable title to the right-of-way to be vacated will be conveyed to the abutting property owner unencumbered.

Further, my opinion of the estimated fair market value assumes the zoning and permitted land use capabilities allowed as of the date of the estimate, which impact the highest and best use determinations.

The value estimate above assumes no unusual influences on value, and that may not be the case here. The acquisition of the alley represents the final piece in the assemblage strategy of WRIT, the owners of the adjacent parcels. If the alley was owned by a knowledgeable market participant, the alley owner would recognize that ownership of the alley would have significantly more value to WRIT than these analyses indicate. The alley owner would likely demand more money (probably much more) than the value estimate above. As you know, in real estate parlance, this is referred to as a "spike" strategy wherein the owner of a critical piece of an assemblage holds out for a much higher price than indicated by the sales prices of earlier pieces of the assemblage. The third edition of the Appraisal-Institute's Dictionary of Real Estate Appraisal defines "assemblage cost" as:

The excess cost incurred to acquire individual adjacent parcels of real estate in a single ownership beyond the estimated cost of acquiring similar sites that do no form a specifically desired assemblage.

The increasing value of adjacent parcels in the process of an assemblage is clearly demonstrated by the acquisition prices paid by WRIT for parcels on the block. Between 1999 and 2000, WRIT assembled all but one of the parcels on this block for a total acquisition price of \$7,450,000. This equates to a value of \$145.00 per square foot of building area for the improvements on the block.

On May 28, 2003 WRIT purchased the last building on the block (716 Jefferson Street, with 3,240 square feet of net leasable area) for a consideration of \$1,120,000, or \$346.00 per square foot of building area. This is more than a 138% increase above the costs of the prior assemblage. Assuming a \$40.00 per square foot nominal FAR land value and 150% premium for the final parcel indicates an assemblage value for the alley of \$1,426,000, or \$200.00 per square foot of "dirt".

Of course, at some point, the asking price of the property would make the proposed development economically unfeasible, and the assemblage owners would make alternative plans for the divided assemblage. Therefore, the price of the alley is that price that maximizes return to the alley owner, but retains the financial feasibility to the buyer of the redevelopment of the total assemblage. This point may be determined by negotiations between the buyer and seller, which may or may not result in the transfer of the property.

Attachment:

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1- Department Report (including Plat)

**Proposed General Policy for the Valuation of Vacated City Right-of-Ways**

This policy addresses two methods for valuing City rights-of-way which are vacated. One method applies when a right-of-way is vacated but the deed conveying the vacated area expressly withholds the conveyance of any use, density or other development rights that would otherwise arise from the vacated land. The second applies when a right-of-way is vacated and the deed of conveyance contains no such withholding of development rights, though it might contain one or more conditions affecting such rights. Both methods are intended to determine the fair market value of the vacated right-of-way area.

**(1) Vacation of Right-of-Way with No Development Rights:** If the City staff determines that a right-of-way is not needed for public purposes, but that no use, density or other development rights should arise from the vacation, then it will recommend to the Planning Commission and City Council that the right-of-way be vacated, but that the applicant not be allowed to build on the property vacated, and not be allowed to utilize any density or other development rights associated with the vacated land area. In this situation, the applicant will agree to have this development prohibition written in the deed that conveys the vacated right-of-way property. This deed restriction will transfer with the property to future owners, if the property is sold.

In this situation, the valuation process will be similar to the process used for the valuation of open space easement properties. The City will determine the assessed land values of nearby surrounding properties with similar zoning and will then apply a discount of 80 percent to those values in order to determine the price that the applicant will be charged for the vacated right-of-way. The 80 percent reduction in value is based on the fact that the applicant has given up, for all future owners of the vacated area, a large portion of the "bundle of rights" inherent in the ownership of the real property. As such, the price to acquire the right-of-way land is based on a reduced value, and future real estate assessments will also reflect the fact that the development rights associated with the vacated land have been given up. The discount of 80 percent is what the City's Department of Real Estate Assessments generally uses for open space assessments and is subject to change depending on the annual data on market sales of properties with open space restrictions.

**(2) Vacation of Right-of-Way with Full or Conditioned Development Rights:** If the staff recommends that a right-of-way be vacated, and that the applicant be allowed to utilize (with or without conditions) the density and other development rights associated with the vacation, then the applicant will be required to pay the fair market value for the vacated area. The fair market value of the vacated area will be based upon the value which the vacated area, when combined with the applicant's existing adjacent land area, causes to be added to the sum of the values of the vacated and existing areas immediately before the vacation.

There are many potential considerations an appraiser would be asked to take into consideration in this valuation of the vacated right-of-way. These include:

- 1) if the combined property is proposed to be rezoned;
- 2) the different or enhanced land use capabilities of the combined property (e.g.,

- potential subdivision);
- 3) the size and shape of the combined property, which could potentially affect the applicable floor area ratio, frontage requirements, height restrictions, and configuration of the proposed development of the property;
- 4) if the vacated area adds to the utility or acceleration of development on the combined property;
- 5) if the vacated area creates assemblage and/or plottage value;
- 6) other factors which may create value.

It should be noted that numbers 1, 2 and 3 above represent the City's policy since 1987, and numbers 4, 5 and 6 represent additions to the policy made in 2003 and allow more elements to be considered in the valuation process which may result in higher valuations in certain cases. It should also be noted that the appraisal considerations under this policy do not reflect "hold out value," which represents the City being the last (or near last) to sell and thereby seeking to get a value excessively above fair market price for its property.

Where a vacation will significantly increase development rights, the City will seek an outside appraisal of the property to be vacated. Once an appraisal is received by the City, the right-of-way sale price will be negotiated by staff in the Office of Management and Budget. A vacation and sale price recommendation will then be made by City staff to the Planning Commission. The Planning Commission will make a decision based on that staff recommendation, and make its own recommendation to City Council, which shall make a decision on the request.

Any vacation of right-of-way applications which are currently being reviewed and considered by the City will be processed utilizing the method of valuation which was in place prior to the adoption of this policy by City Council.

Adopted by City Council on

Date: \_\_\_\_\_

#10  
1-24-04

Docket item #10  
January 24, 2004  
Vacation of Public Rights-of-Way

The League of Women Voters of Alexandria supports flexibility for localities in land use planning and control and good government practices. Hence, we support a change in the current guidelines regarding vacation of public rights of way. We strongly recommend that public officials, the City Council rather than city staff determine whether a public right-of-way is not needed for public purposes or whether the vacation provides a public benefit.

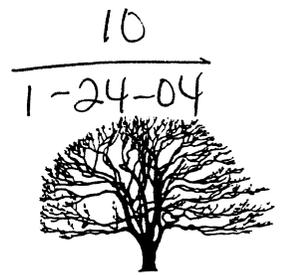
We also strongly recommend that the City Council, not city staff review and consider the fair market value, present and future valuation, sale price and discounted price offered for the property. Certainly, city staff should assemble and report the figures to City Council.

City land is too scarce and too expensive to be treated any other way. City Council must be on the front end of this process, not the back end where City Council considers and votes on a land use special use permit proposal and the following vote is to okay a vacation, which might have not been careful previously scrutinized by public officials.



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Andrew H. Macdonald, Ph.D.  
Councilman

January 22, 2004

TO: Mayor and Members of Council

RE: Docket Item # 10 - Guidelines for the vacation of public right-of -ways

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I would like to amend this policy proposal slightly. I move that we adopt these proposed guidelines but add the following provisions:

- 1) *"That City Council review each request for a vacation separately, in advance of any development proposal that might make use of the parcel."*

NOTE: I believe this provision would benefit developers, as well as the City.

- 2) *"That we instruct City Staff to consider the public benefits of the land, including but not limited to its public open space value, BEFORE determining its market value."*

NOTE: I think is very important to first examine whether it's even ~~a~~ <sup>ppro</sup> appropriate to sell the right of way in question. In cases where the land offers important ~~community~~ <sup>commu</sup> benefits, like an "open streetscape," it may be preferable for the City to retain ~~own~~ <sup>own</sup>ership.

I appreciate your support.

Sincerely,

Andrew Macdonald