

DR60-4 - PROCESSING OF VACATION
REQUESTS (MEMORANDUM FROM LAWRENCE
E. CURFMAN TO LELAND R. EDMONDS)

ACTION

DATE

COMMITTEE

M.A.P.C.

B.C.C./B. CO. C.

Accepted on July 3-3-60.

C. Caswell

DR60-4

THE CITY OF WICHITA

OFFICE OF City Attorney

DATE March 23, 1960

TO L. L. Little, Director of Planning

FROM Fred W. Aley

SUBJECT Vacation Proceedings

I have your communication of _____ date in reference to the captioned matter. The accompanying Resolution is hereby approved as to form.

Very truly yours,

FWA
Fred W. Aley
City Attorney

FWA/t

DR 60-4

METROPOLITAN PLANNING

MARCH 16, 1960

LAWRENCE E. CURFMAN, ASSISTANT CITY ATTORNEY

L. L. LITTLE, DIRECTOR OF PLANNING

VACATION PROCEEDINGS

YOU WILL RECALL THAT WE HAVE RECENTLY DISCUSSED WITH YOU THE NECESSITY, IF ANY, FOR FORWARDING VACATION APPLICATIONS TO THE BOARD OF CITY COMMISSIONERS WHEN SUCH APPLICATION AFFECTS PROPERTY OUTSIDE THE CITY LIMITS BUT WITHIN THE THREE MILE PERIPHERY. IT IS OUR UNDERSTANDING THAT YOU BELIEVE SUCH A PROCEDURE SHOULD BE FOLLOWED BECAUSE OF THE LANGUAGE IN THE STATUTE WHICH READS AS FOLLOWS:

"PROVIDED THAT NO SUCH VACATION SHALL BE GRANTED IF THE GOVERNING BODY OR PLANNING COMMISSION OF ANY CITY HAVING JURISDICTION WITH RESPECT TO THE PLATTING OF LAND IN THE AREA IN WHICH SAID PROPERTY IS LOCATED SHALL PROTEST AGAINST SUCH VACATION".

THIS MATTER WAS PRESENTED TO THE PLANNING COMMISSION RECENTLY AND THE PLANNING COMMISSION HAS DIRECTED THAT THE DEPARTMENT SHOULD TAKE SUCH STEPS AS ARE NECESSARY TO INITIATE THE SUGGESTED PROCEDURE AT THE EARLIEST POSSIBLE TIME.

ATTACHED TO THIS MEMORANDUM IS A DRAFT COPY OF THE FOLLOWINGS:

1. A MEMORANDUM TO THE CITY MANAGER FROM L. L. LITTLE DISCUSSING THE PROPOSED PROCEDURE AND REFERRING TO CERTAIN OPINIONS FROM YOUR OFFICE AS WE UNDERSTAND THEM.
2. A PROPOSED RESOLUTION WHICH MIGHT BE ADOPTED BY THE BOARD OF CITY COMMISSIONERS IF IT APPROVED THE VACATION REQUEST WITHIN THE THREE MILE PERIPHERY.

WITH RESPECT TO THE PROPOSED RESOLUTION, WE WOULD SOLICIT YOUR SPECIFIC COMMENTS AS TO THE ADVISABILITY OF INSERTING A SECTION WHICH WOULD REQUIRE THAT THE COST OF PUBLICATION OF THE RESOLUTION BE BORNE BY THE APPLICANT. WE UNDERSTAND THAT AS A MATTER OF PROCEDURE, THIS IS THE CASE AND IS HANDLED THROUGH THE CITY CLERK'S OFFICE.

WILL YOU PLEASE EXAMINE BOTH THE DRAFT COPY OF THE MEMORANDUM AND THE DRAFT COPY OF THE RESOLUTION, AND GIVE US YOUR COMMENTS AS TO THE CONTENTS AND FORM AT YOUR EARLIEST CONVENIENCE.

L. L. LITTLE
DIRECTOR OF PLANNING

LLL:LRE:SER
ATTACHMENTS
CC: FRED ALEY

WICHITA-SEDGWICK COUNTY

METROPOLITAN AREA PLANNING COMMISSION

OFFICE OF METROPOLITAN PLANNING

DATE MARCH 16, 1960

*DR 60-4
file*

DRAFT COPY

TO FRANK H. BACKSTROM, CITY MANAGER

FROM L. L. LITTLE, DIRECTOR OF PLANNING

SUBJECT VACATION PROCEEDINGS

ON JANUARY 22, 1960, YOU APPROVED A CHANGE IN PROCEDURE FOR REQUESTS FOR VACATIONS OUTSIDE THE CITY LIMITS BUT WITHIN THE THREE MILE LIMIT; SUBJECT TO APPROVAL BY OUR LEGAL COUNSEL. PREVIOUSLY ALL SUCH VACATION REQUESTS WERE REVIEWED BY THE PLANNING COMMISSION AND FORWARDED DIRECTLY TO THE COUNTY COMMISSION FOR ACTION. IN THE OPINION OF LEGAL COUNSEL NOT ONLY THE PLANNING COMMISSION BUT ALSO THE CITY COMMISSION MUST APPROVE ANY VACATION PROCEEDINGS LYING WITHIN THE "THREE MILE RING".

MR. LAWRENCE CURFMAN ADVISES US THAT THE PROPER METHOD BY WHICH THE CITY COMMISSION MIGHT APPROVE SUCH VACATION PROCEEDINGS WITHIN THE THREE MILE PERIPHERY IS THROUGH THE ADOPTION OF AN APPROVING RESOLUTION. A FORMAT FOR SUCH A RESOLUTION HAS BEEN PREPARED AND HAS BEEN APPROVED AS TO FORM BY MR. CURFMAN. IN THE FUTURE, WHENEVER SUCH VACATION PROCEEDINGS ARE RECOMMENDED FOR APPROVAL BY THE PLANNING COMMISSION, SUCH RECOMMENDATION, TOGETHER WITH THE NECESSARY RESOLUTION, WILL BE FORWARDED TO YOU FOR PRESENTATION TO THE CITY COMMISSION.

AS IN THE PAST, IT IS SUGGESTED THAT ANY APPROVAL OF THE VACATION SHOULD BE CONDITIONED ON BEING WITHOUT COST TO THE CITY AND COUNTY. THE PETITIONER WILL THEN BE RESPONSIBLE FOR THE COST OF PUBLISHING THE NECESSARY RESOLUTION.

L. L. LITTLE
DIRECTOR OF PLANNING

LLL:RAL:BER

COPY

RESOLUTION

*DR 60-4
File*

A RESOLUTION APPROVING THE VACATION OF (AN ALLEY, STREET, EASEMENT OR ADDITION) DESCRIBED AS

_____;
ALL IN SEDGWICK COUNTY, KANSAS.

WHEREAS THERE HAS BEEN FILED IN THE OFFICE OF THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING DEPARTMENT, PROCEEDINGS FOR THE VACATION OF A (AN) (ALLEY, STREET, EASEMENT OR ADDITION) DESCRIBED AS (_____);

AND

WHEREAS SAID DEPARTMENT HAS GIVEN NOTICE OF SUCH PROCEEDINGS TO ALL ADJOINING PROPERTY OWNERS OF A PUBLIC HEARING TO BE HELD BEFORE THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION; AND

WHEREAS SUCH A PUBLIC HEARING WAS HELD BY THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION ON _____, 19____;

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. THAT THE (ALLEY, STREET, EASEMENT OR ADDITION) DESCRIBED AS FOLLOWS, TO-WIT:

(FULL LEGAL DESCRIPTION OF THAT WHICH IS TO BE VACATED)

BE AND THE SAME IS APPROVED FOR VACATION.

SECTION 2. THAT IT IS HEREBY RECOMMENDED TO THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, THAT THE SAID ABOVE DESCRIBED LAND BE VACATED IN THE EVENT THAT A PROPER PETITION IS FILED UNDER THE PROVISIONS OF SECTION 57-513 ET SEQ, GENERAL STATUTES OF KANSAS, 1949, OR ANY AMENDMENTS THERETO.

SECTION 3. THAT THIS RESOLUTION SHALL BE IN FORCE AND TAKE EFFECT FROM AND AFTER ITS PASSAGE AND PUBLICATION ONCE IN THE OFFICIAL CITY PAPER.

PASSED AND APPROVED AT WICHITA, KANSAS, THIS _____ DAY OF _____, 19____.

ATTEST:

CITY CLERK (SEAL)

MAYOR

OFFICIAL
DAY OF

DR 60-4

METROPOLITAN PLANNING

MARCH 16, 1960

FRANK H. BACKSTROM, CITY MANAGER

L. L. LITTLE, DIRECTOR OF PLANNING

VACATION PROCEEDINGS

ON JANUARY 22, 1960, YOU APPROVED A CHANGE IN PROCEDURE FOR REQUESTS FOR VACATIONS OUTSIDE THE CITY LIMITS BUT WITHIN THE THREE MILE LIMIT; SUBJECT TO APPROVAL BY OUR LEGAL COUNSEL. PREVIOUSLY ALL SUCH VACATION REQUESTS WERE REVIEWED BY THE PLANNING COMMISSION AND FORWARDED DIRECTLY TO THE COUNTY COMMISSION FOR ACTION. IN THE OPINION OF LEGAL COUNSEL NOT ONLY THE PLANNING COMMISSION BUT ALSO THE CITY COMMISSION MUST APPROVE ANY VACATION PROCEEDINGS LYING WITHIN THE "THREE MILE RING".

MR. LAWRENCE CURFMAN ADVISES US THAT THE PROPER METHOD BY WHICH THE CITY COMMISSION MIGHT APPROVE SUCH VACATION PROCEEDINGS WITHIN THE THREE MILE PERIPHERY IS THROUGH THE ADOPTION OF AN APPROVING RESOLUTION. A FORMAT FOR SUCH A RESOLUTION HAS BEEN PREPARED AND HAS BEEN APPROVED AS TO FORM BY MR. CURFMAN. IN THE FUTURE, WHENEVER SUCH VACATION PROCEEDINGS ARE RECOMMENDED FOR APPROVAL BY THE PLANNING COMMISSION, SUCH RECOMMENDATION, TOGETHER WITH THE NECESSARY RESOLUTION, WILL BE FORWARDED TO YOU FOR PRESENTATION TO THE CITY COMMISSION.

AS IN THE PAST, IT IS SUGGESTED THAT ANY APPROVAL OF THE VACATION SHOULD BE CONDITIONED ON BEING WITHOUT COST TO THE CITY AND COUNTY. THE PETITIONER WILL THEN BE RESPONSIBLE FOR THE COST OF PUBLISHING THE NECESSARY RESOLUTION.

L. L. LITTLE
DIRECTOR OF PLANNING

LLL:RAL:BER

RESOLUTION

A RESOLUTION APPROVING THE VACATION OF (AN ALLEY,
STREET, EASEMENT OR ADDITION) DESCRIBED AS

ALL IN SEDGWICK COUNTY, KANSAS.

WHEREAS THERE HAS BEEN FILED IN THE OFFICE OF THE
WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING DEPARTMENT,
PROCEEDINGS FOR THE VACATION OF A (AN) (ALLEY, STREET, EASE-
MENT OR ADDITION) DESCRIBED AS (_____

_____) ;
AND

WHEREAS SAID DEPARTMENT HAS GIVEN NOTICE OF SUCH PRO-
CEEDINGS TO ALL ADJOINING PROPERTY OWNERS OF A PUBLIC HEARING
TO BE HELD BEFORE THE WICHITA-SEDGWICK COUNTY METROPOLITAN
AREA PLANNING COMMISSION; AND

WHEREAS SUCH A PUBLIC HEARING WAS HELD BY THE WICHITA-
SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION ON
_____, 19____:

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF
WICHITA, KANSAS:

SECTION 1. THAT THE (ALLEY, STREET, EASEMENT OR ADDI-
TION) DESCRIBED AS FOLLOWS, TO-WIT:

(FULL LEGAL DESCRIPTION OF THAT WHICH IS TO BE
VACATED)

BE AND THE SAME IS APPROVED FOR VACATION.

SECTION 2. THAT IT IS HEREBY RECOMMENDED TO THE BOARD OF
COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, THAT THE SAID ABOVE
DESCRIBED LAND BE VACATED IN THE EVENT THAT A PROPER PETITION IS FILED
UNDER THE PROVISIONS OF SECTION 67-613 ET SEQ, GENERAL STATUTES OF
KANSAS, 1949, OR ANY AMENDMENTS THERETO.

SECTION 3. THAT THIS RESOLUTION SHALL BE IN FORCE AND TAKE
EFFECT FROM AND AFTER ITS PASSAGE AND PUBLICATION ONCE IN THE OFFICIAL
CITY PAPER.

PASSED AND APPROVED AT WICHITA, KANSAS, THIS _____ DAY OF
_____, 19_____.

ATTEST:

CITY CLERK (SEAL)

MAYOR

METROPOLITAN PLANNING

MARCH 7, 1960

GLEN EICHER, PLANNER I

LELAND R. EDMONDS, SENIOR PLANNER

VACATION PROCEDURE

EFFECTIVE IMMEDIATELY IN ACCORDANCE WITH THE PLANNING COMMISSION DIRECTION, APPLICATIONS FOR VACATION OF PUBLIC WAYS IN THE THREE MILE AREA MUST BE SUBMITTED NOT ONLY TO THE PLANNING COMMISSION BUT ALSO TO THE BOARD OF CITY COMMISSIONERS FOR CONSIDERATION. THIS SHOULD BE MADE CLEAR IN ANY LETTERS OF ADVICE WHICH ARE MAILED AND SHOULD POSSIBLY BE INCORPORATED IN THE INSTRUCTION SHEET AND APPLICATION FORM.

I WILL ASK BOB LAKIN TO PREPARE A DRAFT OF A RESOLUTION WHICH CAN BECOME A STANDARD FORM TO BE PRESENTED TO THE BOARD OF CITY COMMISSIONERS WITH EACH SUCH REQUEST FOR VACATION OUTSIDE THE CITY LIMITS. THE FORM SHOULD BE APPROVED BY THE DEPARTMENT OF LAW. WHEN IT HAS BEEN SO APPROVED, A MEMORANDUM SHOULD BE DRAFTED TO THE CITY MANAGER BY LAKIN ADVISING OF THE ACTION LEADING UP TO THE PREPARATION OF THIS RESOLUTION AND ADVISING OF THE PROCEDURE WHICH WILL BE FOLLOWED IN THE FUTURE.

CONTACT ME IF YOU HAVE QUESTIONS.

LELAND R. EDMONDS
SENIOR PLANNER

LRE:dw

CC: BOB LAKIN

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

OFFICE OF METROPOLITAN PLANNING

FEBRUARY 9, 1960

TO METROPOLITAN AREA PLANNING COMMISSION

FROM L. L. LITTLE, DIRECTOR OF PLANNING

SUBJECT VACATION PROCEDURE

IT HAS RECENTLY COME TO THE ATTENTION OF THE DEPARTMENT THAT THERE SHOULD BE A CHANGE INITIATED IN THE PROCESSING OF VACATION APPLICATIONS OUTSIDE THE CITY LIMITS BUT WITHIN THE THREE MILE PERIPHERY. THIS IS BASED ON OPINIONS RENDERED BY THE DEPARTMENT OF LAW WITH RESPECT TO THE FOLLOWING LANGUAGE:

"PROVIDED THAT NO SUCH VACATION SHALL BE GRANTED IF THE GOVERNING BOARD OR PLANNING COMMISSION OF ANY CITY HAVING JURISDICTION WITH RESPECT TO THE PLATTING OF LANDS IN THE AREA IN WHICH SAID PROPERTY IS LOCATED SHALL PROTEST AGAINST SUCH VACATION."

PAST PROCEDURE HAS NOT PROVIDED FOR CITY COMMISSION REVIEW OF THREE MILE AREA VACATION REQUESTS. THIS SUGGESTS THAT THE PROCEDURE HAS BEEN FAULTY AND SHOULD BE CORRECTED TO PROVIDE FOR SUCH REVIEW.

THE CITY MANAGER AND THE DEPARTMENT OF LAW HAVE CONCURRED IN THE DEPARTMENTAL SUGGESTION THAT FUTURE THREE MILE AREA VACATION REQUESTS SHALL BE PRESENTED TO THE BOARD OF CITY COMMISSIONERS AS WELL AS TO THE PLANNING COMMISSION. THE CITY COMMISSION WOULD THEN HAVE AN OPPORTUNITY TO ADOPT A RESOLUTION EXPRESSING EITHER ITS APPROVAL OR DISAPPROVAL OF THE VACATION REQUESTED.

LLL:e

L. L. LITTLE
DIRECTOR OF PLANNING

*adopted
as Policy
3-3-60
MAPC*

DR60-4

THE CITY OF WICHITA

OFFICE OF ASSISTANT CITY ATTORNEY

DATE

February 19, 1951

TO IRLAND K. EDWARDS, Senior Planner

FROM LAWRENCE E. CURFMAN

SUBJECT Processing of vacation requests

This is in reply to your Memorandum of January 20 in which you advise that based upon my letter of January 13, you have suggested that the City Manager should be made in the procedure for vacating streets and alleys outside the city limits but within the limits belt.

The writer advise that the City Manager, after receiving your memorandum of January 20, requests that the Department of Law Review review the memorandum before it is presented to the governing body for action. In general, I agree with your Memorandum of January 20, but I point out, however, that I believe the Memorandum is in error in some respects.

It would appear proper, therefore, that in the future all requests for vacation, whether they be within the city limits or without, should be presented to the Board of Commissioners together with an Ordinance for consideration of that Board.

The authority for adopting vacation ordinances is to be found in S. C. 19-13, 1943, as amended in 1951, and as now appearing in S. C. 19-13, 1951, 1953. This authority is limited to vacations within the city limits. In the opinion of the writer, the City of Wichita has no authority to accomplish by ordinance a vacation outside the corporate limits of the city. Your proposal should, in my opinion, be changed to provide that in the event the request is outside the city limits, a resolution be presented consenting to the vacation.

Except as pointed out in this Memorandum, the writer concurs in the Memorandum of January 20.

LAWRENCE E. CURFMAN
Assistant City Attorney

cc: Ed W. Alay

cc: Tom Wood

PR60-4

METROPOLITAN PLANNING

JANUARY 28, 1960

LAWRENCE E. CURPMAN, ASSISTANT CITY ATTORNEY

LELAND R. EDMONDS, SENIOR PLANNER

PROCESSING OF VACATION
REQUESTS

PLEASE REFER TO YOUR LETTER RELATIVE TO THE GENERAL SUBJECT OF VACATIONS DATED JANUARY 18, 1960. IN THIS LETTER YOU DISCUSSED THE ROLE OF THE PLANNING COMMISSION AND THE CITY GOVERNING BODY WITH RESPECT TO REQUESTS FOR VACATIONS OUTSIDE THE CITY LIMITS BUT WITHIN THREE MILES OF THE CITY LIMITS. YOU CITED A PORTION OF THE STATUTES WHICH APPEARS TO INDICATE THAT NO VACATION WITHIN THE THREE MILE PERIPHERY MAY BE APPROVED BY THE COUNTY COMMISSION IF EITHER THE PLANNING COMMISSION OR THE GOVERNING BODY SHOULD OBJECT TO SUCH VACATION.

AS A RESULT OF THIS COMMUNICATION, WE FORWARDED A MEMORANDUM TO THE CITY MANAGER SUGGESTING A CHANGE IN THE VACATION PROCEDURE WHICH WE HAVE FOLLOWED FOR THE PAST SEVERAL YEARS. A COPY OF THAT MEMORANDUM IS ATTACHED FOR YOUR INFORMATION.

THE MANAGER HAS INDICATED THAT HE CONCURS IN OUR PROPOSAL TO INITIATE THE NEW PROCEDURE IMMEDIATELY, PROVIDED THAT THE PROPOSAL MEETS WITH THE APPROVAL OF THE DEPARTMENT OF LAW. WE WOULD, THEREFORE, APPRECIATE YOUR REVIEWING OUR MEMORANDUM TO THE MANAGER IN LIGHT OF YOUR LETTER OF JANUARY 18.

WE WILL APPRECIATE YOUR COMMENTS CONCERNING OUR PROPOSAL AT YOUR EARLIEST CONVENIENCE.

LELAND R. EDMONDS
SENIOR PLANNER

LRE:BER
ATTACHMENT

THE CITY OF WICHITA
OFFICE OF The City Manager

DATE January 22, 1960

TO L. L. Little, Director of Planning
FROM Frank H. Backstrom, City Manager
SUBJECT Vacation Procedure

The procedure outlined in your memorandum of January 20, 1960 relative to requests for vacation meets with my approval, subject to a check with the Planning Department attorney on whether or not such procedure is in violation of state statutes.



Frank H. Backstrom
City Manager

1-26-60
SLR



METROPOLITAN PLANNING

JANUARY 20, 1960

FRANK H. BACKSTROM, CITY MANAGER.

L. L. LITTLE, DIRECTOR OF PLANNING

VACATION PROCEDURE

FOR THE PAST SEVERAL YEARS THE PLANNING DEPARTMENT HAS OPERATED ON INFORMAL LEGAL ADVICE WITH RESPECT TO THE PROCESSING OF REQUESTS FOR VACATION OUTSIDE THE CITY LIMITS BUT WITHIN 3 MILES OF THE CITY LIMITS. SUCH REQUESTS HAVE BEEN PROCESSED THROUGH THE SUBDIVISION COMMITTEE OF THE METROPOLITAN AREA PLANNING COMMISSION AND THROUGH THE PLANNING COMMISSION ITSELF. SUCH REQUESTS, HOWEVER, HAVE NOT BEEN FORWARDED TO THE BOARD OF CITY COMMISSIONERS FOR ITS CONSIDERATION AND RECOMMENDATION.

WE HAVE RECENTLY RECEIVED AN OPINION FROM THE DEPARTMENT OF LAW CONCERNING VACATIONS IN GENERAL. IN THIS OPINION STATUTES WERE CITED WHICH STATE THAT THE BOARD OF COUNTY COMMISSIONERS SHALL NOT APPROVE REQUESTS FOR VACATIONS OUTSIDE THE CORPORATE LIMITS OF THE CITY BUT WITHIN THREE MILES THEREOF IN THE FOLLOWING LANGUAGE:

"PROVIDED THAT NO SUCH VACATION SHALL BE GRANTED IF THE GOVERNING BOARD OR PLANNING COMMISSION OF ANY CITY HAVING JURISDICTION WITH RESPECT TO THE PLATTING OF LANDS IN THE AREA IN WHICH SAID PROPERTY IS LOCATED SHALL PROTEST AGAINST SUCH VACATION."

IT WOULD APPEAR THAT THE PROCEDURE WHICH HAS BEEN FOLLOWED IN THE PAST IS IN ERROR IN THAT WHILE THE PLANNING COMMISSION HAS HAD AN OPPORTUNITY TO EXAMINE EACH OF THESE REQUESTS AND PROTEST AGAINST THE PROPOSAL THE GOVERNING BODY HAS NOT HAD SUCH AN OPPORTUNITY. IT WOULD APPEAR PROPER, THEREFORE, THAT IN THE FUTURE ALL REQUESTS FOR VACATION, WHETHER THEY BE WITHIN THE CITY LIMITS OR WITHIN 3 MILES OF THE CITY LIMITS SHOULD BE PRESENTED TO THE BOARD OF CITY COMMISSIONERS TOGETHER WITH AN ORDINANCE FOR CONSIDERATION OF THAT BOARD. UPON ADOPTION OF THE ORDINANCE THE BOARD OF CITY COMMISSIONERS WOULD THEN INDICATE TO THE BOARD OF COUNTY COMMISSIONERS THAT IT HAD NO OBJECTION TO THE PROPOSED VACATION BUT IN FACT RECOMMENDED THAT SUCH REQUEST BE APPROVED. IT WOULD NOT, OF COURSE, BE NECESSARY TO SUBMIT SUCH A REQUEST OR ORDINANCE TO THE BOARD OF CITY COMMISSIONERS FOR CONSIDERATION IF THE PLANNING COMMISSION DENIES THE REQUEST.

THE PLANNING DEPARTMENT PROPOSES TO INITIATE THIS PROCEDURE
EFFECTIVE IMMEDIATELY UNLESS THERE IS DIRECTION FROM YOUR OFFICE OR
FROM THE OFFICE OF THE CITY ATTORNEY TO THE CONTRARY.

L. L. LITTLE
DIRECTOR OF PLANNING

LLL:OW

3010 DR604

City Attorney
THOMAS A. WOOD
Chief Assistant
LAWRENCE E. CLIFMAN
THOMAS E. GRAY
PAUL J. DONALDSON
ROBERT C. HESSEL
LUCIENE L. HUBB
ARTHUR G. JOHNSON
CHARLES A. STARKS
Assistant City Attorneys



The City of Wichita, Kansas

DEPARTMENT OF LAW

OFFICE OF CITY ATTORNEY

January 15, 1960

Mr. William H. Edmonds, Senior Planner
Sedgwick County
Metropolitan Area Planning Commission
1000 North Lincoln Avenue
Wichita, Kansas

Subject: Vacations

Dear Mr. Edmonds:

Your recent memorandum of January 15, 1960 you have inquired with respect to the vacation of streets lying on the boundaries of the City and the effect of such vacations on the boundaries as previously established. You have inquired specifically whether an existing ordinance would be invalidated by the vacation of a street which was the established boundary. Your question, I assume, could be illustrated by a hypothetical situation in which a street, being described as being "along the east side of the Northwest Quarter of the Southeast Quarter of the Northwest Quarter of Section 10" and such unplatted tract thereafter was platted as a platwise addition with a street known as "Mariposa" running north and south along its east side. The purpose of any such description is merely to identify the tract and to make it possible to locate it. A platting, re-platting or a vacation would only provide an alternate description. Similarly the actual physical location of the city boundary could not be changed by a vacation proceeding.

You next inquired with reference to the powers of the Metropolitan Area Planning Commission and the Board of City Commissioners in connection with vacations of plats outside the corporate limits of the City, but within three miles thereof indicating that it has been asserted that these bodies have advisory powers only. Your attention is invited to the applicable statutes, G. S. 1949, 57-812, 57-813, and particularly to the following language in section 57-

*** Provided, that no such vacation shall be granted if the governing body or Planning Commission of any city having jurisdiction with respect to the platting of lands in the area in which said property is located shall protest against such vacation. ***" None of these provisions have been interpreted by the Supreme Court and while there appear to be some possible ambiguities, the general intent, in my opinion, is that once a plat has been approved the Board of County Commissioners lacks jurisdiction to vacate it if either the city governing body or planning commission protests. This, of course, applies to plats within the three mile belt and not to plats lying beyond that limit.

Respectfully submitted,

LAWRENCE B. GURFMAN
Assistant City Attorney

cc:jd

Mr. Fred W. Aley

DR60-4

METROPOLITAN PLANNING

JANUARY 15, 1960

LAWRENCE E. CURFMAN, ASSISTANT CITY ATTORNEY

LELAND R. EDMONDS, SENIOR PLANNER

VACATIONS

TWO QUESTIONS HAVE RECENTLY BEEN PRESENTED TO THE PLANNING DEPARTMENT CONCERNING VACATIONS OF PUBLIC WAYS. WE WILL APPRECIATE YOUR ADVICE WITH RESPECT TO THESE TWO QUESTIONS.

1. CERTAIN STREETS ARE USED AS BOUNDARY STREETS FOR THE CITY OF WICHITA AND THE BOUNDARY ORDINANCE ADOPTED ANNUALLY BY THE CITY REFERS TO EITHER A RIGHT-OF-WAY LINE OR A CENTER LINE OF A STREET IN SOME LOCATIONS. IF ONE OF THESE BOUNDARY STREETS WERE TO BE VACATED AND THE TITLE WERE TO REVERT TO ADJACENT PROPERTY OWNERS, WOULD THIS IN ANY WAY AFFECT
 - A. THE VALIDITY OF THE EXISTING BOUNDARY ORDINANCES ADOPTED PRIOR TO THE VACATION PROCEEDINGS; OR
 - B. THE ACTUAL PHYSICAL LOCATION OF THAT PORTION OF THE CITY BOUNDARY.

2. IN THE SUBDIVISION COMMITTEE A LOCAL ATTORNEY HAS STATED THAT IN THE CONSIDERATION OF A REQUEST TO VACATE A PLAT WHICH LIES OUTSIDE THE LIMITS OF THE CITY OF WICHITA, THE BOARD OF COUNTY COMMISSIONERS MAKES THE FINAL DECISION AND THE PLANNING COMMISSION SERVES ONLY AN ADVISORY FUNCTION IN RECOMMENDING THAT THE PLAT BE VACATED OR THAT IT NOT BE VACATED. IT HAS BEEN THE UNDERSTANDING OF THIS DEPARTMENT THAT SUCH A PLAT LOCATED OUTSIDE THE CITY BUT WITHIN THREE MILES OF THE CITY, CANNOT BE VACATED BY THE BOARD OF COUNTY COMMISSIONERS IF EITHER THE PLANNING COMMISSION OR THE CITY GOVERNING BODY WERE TO OBJECT TO SUCH VACATION.

MAY WE PLEASE HAVE YOUR COMMENTS WITH RESPECT TO THE TWO QUESTIONS POSED ABOVE?

LELAND R. EDMONDS
SENIOR PLANNER

LRE:BER

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

OFFICE OF Senior Planner

DATE April 18, 1958

DR 60-4

TO L. L. Little, Director of Planning

FROM Leland R. Edmonds, Senior Planner

SUBJECT Vacation of public ways

On this date, I discussed certain problems relative to vacation of public ways with the Manager and certain of them he has suggested should be called to your attention. These problems, as I see them, are as follows:

1. For vacations which lie outside the city limits but within the 3 mile periphery, there is no statutory requirement that they be presented to the City Commission for approval, disapproval, or recommendation for approval or disapproval. From a planning standpoint it would appear that in many instances it would be wise to call these vacations to the attention of the City Commission inasmuch as the 3 mile periphery will ultimately be a part of the city. This represents a new policy, however, and it is the Manager's suggestion that it might well be started now while the Metropolitan Area Planning Commission is in its early and formative stages.
2. A vacation of land within the city must take certain steps:
 - (a) Recommendation from the Metropolitan Area Planning Commission.
 - (b) Presentation to the Board of City Commissioners for approval or disapproval. (This step vacates the use of the land as opposed to the title of the land).
 - (c) The presentation to the City Commission of an ordinance by which the use of the land may technically be vacated. (This is the official act of vacation as opposed to the steps taken in (b) above, which is merely an indication that official action will be taken at the appropriate time).
 - (d) Carrying forth the legal processes before the Board of County Commissioners by which the title of land may be vacated.

Page 2 - L. L. Little, Director of Planning
April 18, 1958

In the past the policy has been somewhat hazy as to what we should expect from the petitioner or his attorney. In all instances vacations, if granted or recommended, are to be "at no cost to the city". It is appropriate here to note that there is no fee charged for the filing of a vacation petition.

The planning staff has rather consistently withheld Planning Commission recommendations on vacations until such time as all conditions such as substitute easements, new dedications, etc., have been made and proof has been received in this office. In some instances, vacations have been forwarded to the City Commission without an ordinance and in other instances vacation recommendations have been held here until the ordinance is received. In my conversation with the Manager on this date, he agreed that it appeared perfectly reasonable to expect the attorney to provide an approved ordinance which would accompany the vacation recommendation, and that the petitioner could be notified that the request would not be taken to the City Commission until such time as an ordinance is in our hands.

At the present time there are a large number of vacation requests which are being held in abeyance for one reason or another. In almost all instances an ordinance is lacking. On the strength of the Manager's statements relative to these vacations which are concerned with land within the city limits, I have notified all of the petitioners for vacation of such lands that requirements, including an ordinance, must be met and proof furnished to us before they will be submitted to the City Commission.

I would urge that you immediately consider a policy relative to the proper handling of vacations outside the City Limits. This may well be a difficult situation because of the past conflicts between City and County. On the other hand, it appears highly proper that the city be allowed an opportunity to express itself on matters which affect the land which will ultimately be under the control of the City Commission. Finally, I would suggest that there is some urgency for a decision on this matter inasmuch as certain of the petitions heard at the April 15th meeting are being held in abeyance with no further action taken as per the instructions of the Manager.

LRE:br


Leland R. Edmonds
Senior Planner