



**FOREST PARK NEIGHBORHOOD ASSOCIATION**

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June 1, 2012

Mr. Patrick Hinds  
Land Use and Transportation Program  
Multnomah County  
1600 SE 190<sup>th</sup> Avenue  
Portland, OR 97233

Re: Multnomah County Board of Commissioners Resolution No. 2012-028  
Hillhurst Right-of-Way / Road Vacation Settlement

Dear Mr. Hinds:

The Land Use Committee of the Forest Park Neighborhood Association met on May 31, 2012 to discuss the Hillhurst vacation proposal and concluded that the Forest Park Neighborhood Association should support the proposed Resolution. We understand that the proposal is for the County to vacate the public right-of-way surrounding the Fred and Corinne Bacher property, and in return the Bachers will ask the Multnomah County Circuit Court to vacate its judgment in the matter, and the County will drop its appeal of that judgment.

Accordingly, we would like to state the following in support of the settlement:

1. The Forest Park Neighborhood Association strongly supports the recent decision by Multnomah County and Metro to declare Rural Reserve status for the land in the County between Forest Park and the Multnomah/Washington county line. These lands, which include the Bacher property, are important wildlife habitat lands. Currently zoned for forest use, we see the forestry activity on this particular parcel as an appropriate long-term use of the land, and we see no significant reason that the 30-foot right-of-way on its perimeter should not be fully dedicated to forestry activities.
2. With the designation of these lands as Rural Reserve, and because of the suitability of this particular land for forestry uses, we suggest that the County ought not insist on maintaining this right-of-way as a public

roadway, not only because it has no roadway connections other than to itself, and because it traverses impossible slopes; we are concerned that it provides an unnecessary and ill-advised argument for future urban development, if only as an artifact of historical intention.

3. The reasons for the existence of the Hillhurst right-of-way or public roadway are insufficient for the County to oppose its vacation<sup>1</sup>. When the platted subdivision was set out in 1892<sup>2</sup>, there was at least a theoretical, “on paper” possibility that the 30-foot right-of-way would become an actual roadway, because of its then connection to Springville Road. This possibility is “theoretical” because it would only have provided connectivity if the actual topography were conducive to building a road, which it most assuredly is not. Further, when Springville Road was relocated in 1903, its prior possible connection to the Hillhurst subdivision was eliminated, and the potentially connecting portion of the Springville roadway itself was vacated, leaving the Hillhurst right-of-way without connection and without discernable purpose<sup>3</sup>.
4. Multnomah County has good reason to be concerned about the precedent that would be created by a successful court-mandated vacation of the Hillhurst roadway. After all, there are many unused rights-of-way in the hills of our neighborhood, and on reading the Bacher case, other property owners may decide that public roadways on their properties could be successfully challenged, whether or not their factual situations are as clear-cut as the Bachers’. Adjudicating these potential vacation actions would not be inexpensive to the County or its taxpayers. On this basis, we support the County’s bargain with the Bachers, that in return for dropping the appeal, the Bachers will apply for a vacation of the Circuit Court decision, and the County will vacate the public roadway surrounding the Bacher property. We think this arrangement makes sense for both the County and the Bachers.

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<sup>1</sup> We note that the County does not have, and never has had, any intention to improve this right-of-way.

<sup>2</sup> When the Hillhurst subdivision was created, it is likely that its developers foresaw future housing developments, for the plat looks similar to those of east Portland, then being developed, where perimeter 30-foot rights-of-way were intended to adjoin similarly platted neighboring subdivisions, creating a grid of 60-foot roadways. In retrospect, of course, the Hillhurst plat seems to have been carelessly put together, as it copies the flatland plats without considering the topography.

<sup>3</sup> It is relevant to note that none of the owners of property within the Hillhurst subdivision has ever used the right-of-way in designing their own connections (driveways) to the road system.

Having read the Multnomah County Circuit Court's decision in the matter, we are convinced that, however strongly the County may feel about the likelihood of a successful appeal, this is not the case to test the County's legal theories with the Oregon Court of Appeals, for the equities of the decision are clearly with the Bachers. We appreciate the wisdom of the settlement agreement and urge the Board of Commissioners to approve it as in the public interest.

Thank you for considering our comments.

Sincerely,



Jerry Grossnickle, President