

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> October 14, 2014		<b>DATE SUBMITTED:</b> September 18, 2014	
<b>DEPARTMENT OF ORIGIN:</b> Development Services		<b>SUBMITTED BY:</b> Randy Haynes	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consideration of a request to abandon a 20-foot wide and 250-foot long public alley right-of-way extending west from South Bryan Avenue between West 31 <sup>st</sup> Street and South Sims Avenue in Block 113 of Bryan Original Townsite on property currently addressed as 600 South Bryan Avenue in Bryan, Brazos County, Texas.			
<b>SUMMARY STATEMENT:</b> The applicant, Phillip Garrett, is requesting an official quitclaim deed to land shown on the official map of Bryan as public alley right-of-way within Block 113 of the Bryan Original Townsite, to formally establish his ownership of the tract along with the adjoining land. The tract requested to be abandoned and quitclaimed is 5,000 square feet in area and has never been improved as a driving surface.			
Acting on behalf of the general public, only Bryan's City Council is authorized to officially abandon all or portions of rights-of-way dedicated for public use. The Planning and Zoning Commission hears and makes a recommendation on proposals to abandon any such rights-of-way.			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> During its regular meeting on September 4, 2014, the Planning and Zoning Commission concurred with staff and <u>unanimously recommended approving</u> this right-of-way abandonment.			
<ul style="list-style-type: none"> <li>• There is no public need for a public right-of-way at this location at this time nor will there likely be in the future.</li> <li>• Excess right-of-way burdens the public with possible maintenance, liability concerns, and is an inefficient use of urban land.</li> <li>• The tract requested to be abandoned and quitclaimed has been functionally integrated with the adjacent land and has been developed for over 50 years.</li> <li>• Formally abandoning and quitclaiming the subject tract, as recommended, will help remove a cloud on the title of Mr. Garrett's property.</li> <li>• The recommended rearrangement of land will have the most likely long-range public benefit.</li> </ul>			
During its meeting on September 4, 2014, the Planning and Zoning Commission concurred with staff and <u>unanimously recommended approving</u> this right of way abandonment.			
<b>OPTIONS (In Suggested Order of Staff Preference):</b>			
<ol style="list-style-type: none"> <li>1. approve the requested right-of-way abandonment;</li> <li>2. approve the requested right-of-way abandonment with modifications, which may require consideration at a future City Council meeting; or</li> </ol>			

3. deny the requested right-of-way abandonment.

**ATTACHMENTS:**

1. location map;
2. draft ordinance and exhibits;
3. excerpt from Planning and Zoning Commission meeting minutes of September 4, 2014; and
4. staff report to the Planning and Zoning Commission.

**FUNDING SOURCE: N/A**

**APPROVALS:** Kevin Russell, 9-24-14; Joey Dunn, 9-24-14; Hugh R. Walker, 10/01/2014

**APPROVED FOR SUBMITTAL: CITY MANAGER**

**APPROVED FOR SUBMITTAL: CITY ATTORNEY** Janis K. Hampton, 09-30-2014

Revised 04/2013

**LOCATION MAP:**



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS, PROVIDING FOR THE ABANDONMENT OF THE FOLLOWING PUBLIC RIGHT-OF-WAY, TO WIT: A 20-FOOT WIDE AND 250-FOOT LONG PUBLIC ALLEY RIGHT-OF-WAY EXTENDING WEST FROM SOUTH BRYAN AVENUE BETWEEN WEST 31<sup>ST</sup> STREET AND SOUTH SIMS AVENUE IN BLOCK 113 OF BRYAN ORIGINAL TOWNSITE; AUTHORIZING THE CONVEYANCE THEREOF TO THE ABUTTING PROPERTY OWNER; PROVIDING FOR THE TERMS AND CONDITIONS OF ABANDONMENT AND CONVEYANCE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the owner of part of Lots 1 - 5 and all of Lots 6 - 10 in Block 113 of the Bryan Original Townsite has requested the abandonment of a 5,000 square foot section of public alley right-of-way located adjacent to said lots; and

**WHEREAS**, during its regular meeting on September 4, 2014, the Bryan Planning and Zoning Commission recommended approving the request to abandon and close said portions of public street right-of-way; and

**WHEREAS**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration a part of which being the discontinuance of the obligations of the City of Bryan to maintain said right-of-way portions; and

**WHEREAS**, said above recited considerations are of at least equal value to the appraised market value of these right-of-way portions; and

**WHEREAS**, the City Council of the City of Bryan, acting pursuant to law, deems it advisable to abandon and convey this tract of land to the abutting property owner and is of the opinion that said land is not needed for public use, and that same should be abandoned to the abutting property owner as hereinafter provided; and

**WHEREAS**, the City Council of the City of Bryan is of the opinion that the best interest and welfare of the public will be served by abandoning and conveying same to the abutting property owner.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN:**

1.

That all language contained in the preambles to this Ordinance shall be incorporated into the text of the Ordinance as if set forth verbatim herein.

2.

That the following described tract in the City of Bryan, Brazos County, Texas be and the same is hereby abandoned, vacated and closed insofar as the right and title of the public are concerned:

a 20-foot wide and 250-foot long public alley right-of-way extending west from South Bryan Avenue between West 31<sup>st</sup> Street and South Sims Avenue in Block 113 of Bryan

Original Townsite; in Bryan, Brazos County, Texas; said tract being described more particularly and depicted in attached Exhibit "1" (quitclaim deed).

3.

That the abandonment and conveyance provided for herein is made and accepted subject to all present zoning and deed restrictions, if the latter exist, and all existing easements, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise.

4.

That the abandonment and conveyance provided for herein shall extend only to the public right, title, easement and interest and shall be construed to extend only to the interest which the governing body for the City of Bryan may legally and lawfully abandon and vacate.

5.

That the Mayor of the City of Bryan is hereby authorized to execute and deliver a quit claim deed conveying the above-described property to the abutting property owner. Said deed shall furthermore conform to all other conditions and restrictions herein set out and is attached hereto as Exhibit "1" and incorporated herein by this reference for all purposes.

6.

That this ordinance shall take effect immediately upon its second and final reading and passage.

**PRESENTED AND GIVEN** first reading the 14<sup>th</sup> day of October, 2014 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, **PASSED AND APPROVED** on the 28<sup>th</sup> day of October, 2014 by a vote of \_\_\_\_ yeses and \_\_\_\_ noes at a regular meeting of the City Council of the City of Bryan, Texas.

**ATTEST:**

**CITY OF BRYAN:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**EXHIBIT "1":**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS LICENSE NUMBER.

**QUITCLAIM DEED**

THE STATE OF TEXAS     §  
COUNTY OF BRAZOS     §

KNOW ALL PERSONS BY THESE PRESENTS:

That the CITY OF BRYAN TEXAS a municipal corporation existing by and under the laws of the STATE OF TEXAS acting by and through its duly elected mayor (Grantor) does by these presents RELEASE AND FOREVER QUIT CLAIM unto **Phillip R. Garrett**, the owner of the property adjacent thereto (Grantee), all of the following tract of land described as follows:

a 20-foot wide and 250-foot long public alley right-of-way extending west from South Bryan Avenue between West 31st Street and South Sims Avenue in Block 113 of Bryan Original Townsite; said tract being more particularly described by metes-and-bounds on attached Exhibit "A" and depicted on attached Exhibit "B".

This conveyance is subject to all present zoning and deed restrictions, if the latter exist Grantor expressly reserves all easements whether apparent or non-apparent, aerial, surface, underground or otherwise.

Subject to the above reservation, Grantor quitclaims to Grantee all of Grantor right, title and interest in and to such tract of land, to have and to hold it to Grantee, Grantee's heirs successors and assigns forever. Neither Grantor nor Grantor's successors or assigns will have, claim or demand any right or title to the property or any part of it and this deed is given to relinquish and release any right, title, and interest the Grantor its successors and assigns may have in the above-described property. When the context requires singular nouns and pronouns include the plural.

This conveyance is authorized by an ordinance of the governing body for the City of Bryan as approved and adopted on October 28<sup>th</sup>, 2014.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2014

ATTEST:

CITY OF BRYAN:

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

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Janis K. Hampton, City Attorney

THE STATE OF TEXAS     §  
COUNTY OF BRAZOS     §

This instrument was acknowledged before a notary public on \_\_\_\_\_  
by Jason P. Bienski, Mayor of the City of Bryan, a municipal corporation, on behalf of said  
Municipal Corporation.

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Notary Public, State of Texas

**EXHIBIT "A":  
METES-AND-BOUNDS DESCRIPTION**

Being a **5,000 sq. ft.** tract or parcel of land lying and being situated in the Stephen F. Austin League, No. 9, A-62, and being a part of Block 113, Bryan Original Townsite, according to the plat recorded in Volume H, Page 721, Deed Records, Brazos County, Texas, and said **5,000 sq. ft.** tract being more particularly described as follows:

Commencing at a ¾" iron rod found marking the westernmost corner of Block 99, City of Bryan Original Townsite indicated above, said rod being located on the eastern right of way line of Bryan Street, a 100'-wide City of Bryan public right of way;

THENCE S 59°50'25" W, through said Bryan Street, for a distance of 128.06' to a ½" iron rod set marking the intersection of the south east right of way line of Thirty First Street, an 80' wide City of Bryan public right of way and the northwest right of way line of the above mentioned Bryan Street, said rod also marking the easternmost corner of Block 113, City of Bryan Original Townsite, to the **POINT OF BEGINNING**;

THENCE S 08°30'00" W, along the southeastern boundary line of Lot 10, Block 113, of said Townsite, said line also being the northeastern right of way line of Bryan Street, to the southernmost corner of Lot 6, Block 113, Bryan Original Townsite Plat, for a distance of 115.00' to a cotton spindle set;

THENCE N 81°30'00" W, along the southwestern boundary line of Lots 6 through 10, Block 113, Bryan Original Townsite, at 182.00' entering a concrete one-story warehouse and continuing for a total distance of 250.00' to the south east line of Parker Street now closed and abandoned;

THENCE S 08°30'00" W, continuing through said concrete warehouse and along said southeast line of Parker Street, for a distance of 20.00' to the northernmost corner of Lo1, of said Block 113;

THENCE S 81°30'00" E, through said concrete warehouse and along the northeastern boundary lines of Lots 1 through 5, said Block 113, at a distance of 68.00' leaving the warehouse, and continuing for a total distance of 250.00' to a cotton spindle set on the northeastern right of way line of said Bryan Street;

THENCE N 08°30'00" E, along the northwestern right of way line of said Bryan Street, for a distance of 20.00' to the **POINT OF BEGINNING**, containing a **5,000 sq. ft.** of land more or less.

**Note:** Bearing source is the description in the deed to Philip and Donna Garrett recorded in Volume 5833, Page 133, Official Records, Brazos County, Texas.



**EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING  
MINUTES OF SEPTEMBER 4, 2014:**

**5. CONSENT AGENDA.**

**c. Right-of-Way Abandonment RA14-05: Bryan Original Townsite Block 113**

*A request to abandon a 20-foot wide and 250-foot long public alley right-of-way extending west from South Bryan Avenue between West 31<sup>st</sup> Street and South Sims Avenue in Block 113 of Bryan Original Townsite on property currently addressed as 600 South Bryan Avenue in Bryan, Brazos County, Texas. (R. Haynes)*

**Commissioner Beckendorf moved to approve the Consent Agenda. Commissioner Bienski seconded the motion, and the motion passed unanimously.**

PLANNING AND ZONING COMMISSION  
STAFF REPORT



September 4, 2014

**Right-of-way Abandonment case no. RA14-05:  
Bryan Original Townsite Block 113**

**SIZE AND LOCATION:** a 20-foot wide and 250-foot long public alley right-of-way extending west from South Bryan Avenue between West 31<sup>st</sup> Street and South Sims Avenue in Block 113 of Bryan Original Townsite on property currently addressed as 600 South Bryan Avenue

**APPLICANT(S):** Phillip Garrett

**STAFF CONTACT:** Randy Haynes, Senior Planner

**SUMMARY RECOMMENDATION:** Staff recommends **approving** the requested right-of-way abandonment.





## **RIGHT-OF-WAY REQUESTED TO BE ABANDONED:**

The applicant, Phillip Garrett, is requesting an official quit-claim deed to land shown on the official map of Bryan as public alley right-of-way within Block 113 of the Bryan Original Townsite, to formally establish his ownership of the tract along with the adjoining land. The tract requested to be abandoned and quit-claimed is 5,000 square feet in area and has never been improved as a driving surface.

On April 9, 1860, William Joel Bryan sold to Messrs Abram Groesbeck and W.R. Baker 640 acres of land in Brazos County. This transaction was recorded at the County Clerk's office in Boonville in Volume F, Page 169. The subject 640 acres is the one square mile parcel that is what we today know as the Bryan Original Townsite (BOTS). Groesbeck and Baker were at the time President and Secretary of the Houston & Texas Central Railroad (H&TC) which by 1860 had completed construction from Galveston to what is now the town of Millican. In return for right of way across Mr. Bryan's land north of Millican for the H&TC Rail Road, Baker and Groesbeck agreed to purchase the parcel and lay out a future town site. The chief engineer of the H&TC, Theodore Kosse, laid out the lots and blocks of the new town to be called "Bryan City".

It is important to note that from that date, April 9, 1860, Groesbeck and Baker owned all the land that is now the original town site of Bryan and would be selling or otherwise transferring that land to others for decades to come.

According to a deed filed in county records, Volume G, Page 549, Groesbeck and Baker sold all of blocks 113 and 114 in the town of Bryan City to Mr. Spencer Ford. The transaction took place in Houston on October 20, 1866, and was recorded in Brazos County on November 16, 1866.

Also in October 1866, Brazos County residents voted to move the county seat and post office from Boonville to Bryan. That same year, the residents of Bryan voted to form a town and elect a government and town marshal. Because of the laws governing reconstruction of the former Confederate States, the State of Texas was unable to approve the incorporation until 1871. The first train reached Bryan on August 19, 1867. At that time, more than 5,000 people lived in the immediate area.

Although Bryan functioned as a town before it incorporated in 1871, the official entity that became the City of Bryan never possessed an alley right of way in Block 113. The entire block was sold to Mr. Ford five years before the City of Bryan existed. The H&TC chief engineer, Theodore Kosse, may not have drawn a plat of Bryan until late 1865 or early 1866, being otherwise engaged in service to the Confederate States. Whenever it was ultimately produced however, such a drawing by Kosse would have been used by the property owners, Groesbeck and Baker, for selling lots in the earliest days.

The instrument currently used as the final plat of the Bryan Original Townsite is an Official City Map commissioned by the Bryan City Commission (Council) in 1898 and drawn by H.J. McNair, a surveyor and civil engineer from Houston. That map was recorded in Volume H, Page 721, over 30 years after all of Blocks 113 and 114 were sold to Mr. Ford.

In order to eliminate a cloud on the title of the property caused by the 1898 H.J. M<sup>ac</sup>Nair map that depicts a public alley in Block 113, Mr. Garrett is requesting that a formal quit-claim deed be executed by the City of Bryan for that area of Block 113 that would have been the location of an alley were the ownership history of the property similar to other blocks within the original town site.

Acting on behalf of the general public, only Bryan's City Council is authorized to officially abandon rights of way dedicated for public use. The Planning and Zoning Commission hears and makes a recommendation on proposals to abandon any such rights-of-way.

## **ANALYSIS AND RECOMMENDATION:**

Upon review by the members of the SDRC it has been found that no public or franchised utilities are now nor have ever been installed within the land described as an alley. The Conlee-Garrett buildings were built on the land over 50 years ago. Based on the aforementioned and evidence of ownership, staff is of the opinion that there never has been a public alley in Block 113 and even if the City of Bryan was able to claim ownership of property within that block, there is no public need for such interest at this time nor will there likely be in the future.

The Site Development Review Committee and staff recommend **approving** the request to abandon and quit-claim the subject property as requested. Officially releasing all claims to the subject tract, as recommended, will allow the current and future owners clear title and rights to their property.