

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: June 25, 2013		DATE SUBMITTED: May 22, 2013	
DEPARTMENT OF ORIGIN: Development Services		SUBMITTED BY: Randy Haynes	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input checked="" 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
AGENDA ITEM DESCRIPTION: Consideration of a request to abandon a 10' x 115' portion of North Polk Street right-of-way extending north from its intersection with East 24th Street and adjacent to Lot 1 in Block 73 of Bryan Original Townsite, and a 15' x 115' portion of North Pierce Street right-of-way extending north from its intersection with East 24th Street adjacent to Lot 5 in Block 73 of Bryan Original Townsite.			
SUMMARY STATEMENT: The applicants, Mr. and Mrs. Neideffer, own Lots 1 thru 5 in Block 73 of Bryan Original Townsite on the north side of East 24th Street between North Polk and North Pierce Streets, including a single-family home currently addressed as 700 E. 24th Street. They are requesting the City to abandon a 10' x 115' portion of North Polk Street right-of-way adjacent to Lot 1 in Block 73 of Bryan Original Townsite, and a 15' x 115' portion of North Pierce Street right-of-way adjacent to Lot 5 in Block 73 of Bryan Original Townsite. The Neideffers have requested these abandonments to be able to integrate these two strips of land 1,150 square feet and 1,750 square feet in area, respectively, with their ownership of adjoining land. 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. At a minimum, right-of-way abandonments should not interfere with the smooth circulation of vehicular and pedestrian traffic.			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approving the request to abandon these public street rights-of-way, as requested, subject to the reservation of a public utility easement for the entire width and length of the right-of-way for North Pierce Street proposed to be abandoned, to accommodate existing ATMOS gas line facilities. Excess right-of-way burdens the public with possible continued maintenance, liability concerns, and is an inefficient use of urban land. The rights-of-way requested to be abandoned have never been improved with a driving surface and there are currently no public utility services located within these street segments. The North Polk Street portion requested to be abandoned currently has approximately 18-feet of pavement, which is less than the 27 feet of pavement required for new local streets. The portion of North Pierce Street currently has approximately 22 feet of pavement. If the requested abandonment were approved, there would still be sufficient right-of-way remaining for possible widening of both streets to modern local street standards (70 feet and 65 feet of right of way, respectively) in the future. Abandoning the subject rights-of-way, as recommended, will allow this land to be formally integrated with adjacent land. Staff contends that the recommended rearrangement of land will have the most likely long-range public benefit. During its meeting on May 16, 2013, the Planning and Zoning Commission concurred with staff and unanimously recommended approving this request to abandon this right-of-way portion.			

OPTIONS (In Suggested Order of Staff Preference):

1. approve the requested right-of-way abandonment with the recommended condition;
2. approve the requested right-of-way abandonment with modifications, which may require consideration at a future City Council meeting; or
3. deny the requested right-of-way abandonment.

ATTACHMENTS:

1. location map;
2. draft ordinance and exhibits;
3. excerpt from P&Z meeting minutes; and
4. staff report to the Planning & Zoning Commission.

FUNDING SOURCE: N/A

APPROVALS: Joey Dunn, 5-24-13; Hugh R. Walker, 05/29/2013

APPROVED FOR SUBMITTAL: CITY MANAGER

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 06-03-2013

Revised 04/2013

LOCATION MAP:



ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF THE FOLLOWING PUBLIC RIGHTS-OF-WAY, TO WIT: A 10' X 115' PORTION OF NORTH POLK STREET RIGHT-OF-WAY EXTENDING NORTH FROM ITS INTERSECTION WITH EAST 24TH STREET AND ADJACENT TO LOT 1 IN BLOCK 73 OF BRYAN ORIGINAL TOWNSITE, AND A 15' X 115' PORTION OF NORTH PIERCE STREET RIGHT-OF-WAY EXTENDING NORTH FROM ITS INTERSECTION WITH EAST 24TH STREET ADJACENT TO LOT 5 IN BLOCK 73 OF BRYAN ORIGINAL TOWNSITE IN BRYAN, BRAZOS COUNTY, TEXAS; AUTHORIZING THE CONVEYANCE THEREOF TO THE ABUTTING PROPERTY OWNERS; PROVIDING FOR THE TERMS AND CONDITIONS OF ABANDONMENT AND CONVEYANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the owners of property located in Block 73 in the Bryan Original Townsite have requested the abandonment of a 10' x 115' portion of North Polk Street right-of-way extending north from its intersection with East 24th Street and adjacent to Lot 1 in Block 73 of Bryan Original Townsite, and a 15' x 115' portion of North Pierce Street right-of-way extending north from its intersection with East 24th Street adjacent to Lot 5 in Block 73 of Bryan Original Townsite; and

WHEREAS, during its regular meeting on May 16, 2013, the Bryan Planning and Zoning Commission recommended approving the request to abandon and close said portion of public street rights-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 these tracts of land to the abutting property owners and is of the opinion that said land is not needed for public use, and that same should be abandoned to the abutting property owners 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 owners;

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

a 10' x 115' portion of North Polk Street right-of-way extending north from its intersection with East 24th Street and adjacent to Lot 1 in Block 73 of Bryan Original Townsite, and a 15' x 115' portion of North Pierce Street right-of-way extending north from its intersection with East 24th Street adjacent to Lot 5 in Block 73 of Bryan Original Townsite, Brazos County, Texas, said tracts being described and depicted more particularly in the 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 quitclaim deed conveying the above-described properties to the abutting property owners. Said deed shall specifically reserve a public utility easement over the entire length and width of the abandoned North Pierce Street right-of-way, to accommodate existing ATMOS gas line facilities.

6.

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

PRESENTED AND GIVEN first reading the 11th day of June, 2013 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, PASSED AND APPROVED on the 25th day of June, 2013 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 **Matthew and Julie Neideffer**, the owners of the property adjacent thereto (Grantee), all of the following tracts of land described as follows:

a 10' x 115' portion of North Polk Street right-of-way extending north from its intersection with East 24th Street and adjacent to Lot 1 in Block 73 of Bryan Original Townsite, and a 15' x 115' portion of North Pierce Street right-of-way extending north from its intersection with East 24th Street adjacent to Lot 5 in Block 73 of Bryan Original Townsite, Brazos County, Texas, said tracts being described more particularly 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. Save and except this conveyance is subject to the reservation of a public utility easement over for the entire width and length of the abandoned North Pierce Street right-of-way, being Tract 2 shown on attached Exhibit "B", to accommodate existing ATMOS gas line facilities.

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 June 25, 2013.

EXECUTED this the _____ day of _____, 2013

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

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.

Notary Public, State of Texas

Exhibit "A":

**TRACT 1
METES AND BOUNDS DESCRIPTION
OF A 0.0264 ACRES TRACT
BRYAN ORIGINAL TOWNSITE
BRAZOS COUNTY, TEXAS**

Being a tract of land containing 0.0264 acres, out of the Bryan Original Townsite, Brazos County, Texas, according to the plat thereof, as recorded in Volume H, Page 721 of the Brazos County Deed Records, being a portion of the right-of-way of North Polk Street, adjacent to Lot One (1), Block Seventy-three (73) of the said Bryan Original Townsite, the 0.0264 acres tract being the same tract of land shown on the Plat of Survey, prepared by Carlomagno Surveying, having the file name 12157-4th.dwg, and being more particularly described as follows:

BEGINNING at a 5/8" iron rod found for the northwest corner of the said Lot 1, Block 73, being the northeast corner of this tract, also being a point located at the intersection of the east right-of-way line of North Polk Street, a variable width right-of-way and the south right-of-way line of the 20' alley as shown on the said plat of Bryan Original Townsite;

THENCE along the said east right-of-way line of North Polk Street, South 05°00'00" West, a distance of 115.00 feet to a 5/8" iron rod with an orange plastic cap marked "Carlomagno RPLS 1562" set for the southeast corner of this tract, also being the southwest corner of the said Lot 1, Block 73, also being a point at the intersection of the said east right-of-way of North Polk Street and the north right-of-way line of East 24th Street, a 100' right-of-way;

THENCE severing the said right-of-way of North Polk Street the following calls and distances:

North 85°00'00" West, a distance of 10.00 feet to a 5/8" iron rod with an orange plastic cap marked "Carlomagno RPLS 1562" set for the southwest corner of this tract;

North 05°00'00" East, a distance of 115.00 feet to a 5/8" iron rod with an orange plastic cap marked "Carlomagno RPLS 1562" set for the northwest corner of this tract;

South 85°00'00" East, a distance of 10.00 feet to the PLACE OF BEGINNING containing 0.0264 acres.

**TRACT 2
METES AND BOUNDS DESCRIPTION
OF A 0.0396 ACRES TRACT
BRYAN ORIGINAL TOWNSITE
BRAZOS COUNTY, TEXAS**

Being a tract of land containing 0.0396 acres, out of the Bryan Original Townsite, Brazos County, Texas, according to the plat thereof, as recorded in Volume H, Page 721 of the Brazos County Deed Records, being a portion of the right-of-way of North Pierce Street,

adjacent to Lot Five (5), Block Seventy-three (73) of the said Bryan Original Townsite, the 0.0396 acres tract being the same tract of land shown on the Plat of Survey, prepared by Carlomagno Surveying, having the file name 12157-4th.dwg, and being more particularly described as follows:

COMMENCING at a 5/8" iron rod found for the northwest corner of the Lot One (1), Block Seventy-three (73) of the said Bryan Original Townsite, also being a point located at the intersection of the east right-of-way line of North Polk Street, a variable width right-of-way and the south right-of-way line of the 20' alley as shown on the said plat of Bryan Original Townsite;

THENCE South 05°00'00" West, a distance of 115.00 feet to a 5/8" iron rod with an orange plastic cap marked "Carlomagno RPLS 1562" set for the southwest corner of the said Lot 1, Block 73, also being a point at the intersection of the said east right-of-way of North Polk Street and the north right-of-way line of East 24th Street, a 100' right-of-way;

THENCE along the said north right-of-way of East 24th Street, South 85°00'00" East, a distance of 250.00 feet to a 5/8" iron rod with an orange plastic cap marked "Carlomagno RPLS 1562" set for the PLACE OF BEGINNING of this tract, also being the southwest corner of this tract, also being the southeast corner of the said Lot 5, Block 73, also being a point at the intersection of the said north right-of-way of East 24th Street and the west right-of-way line of North Pierce Street, a variable width right-of-way;

THENCE along the common line between this tract and the said Lot 5, Block 73, North 05°00'00" East, a distance of 115.00 feet to a 5/8" iron rod with an orange plastic cap marked "Carlomagno RPLS 1562" set for the northwest corner of this tract, also being the northeast corner of the said Lot 5, Block 73, also being a point at the intersection of the said west right-of-way line of the said North Pierce Street and the south right-of-way line of the 20' alley as shown on the said plat of the Bryan Original Townsite;

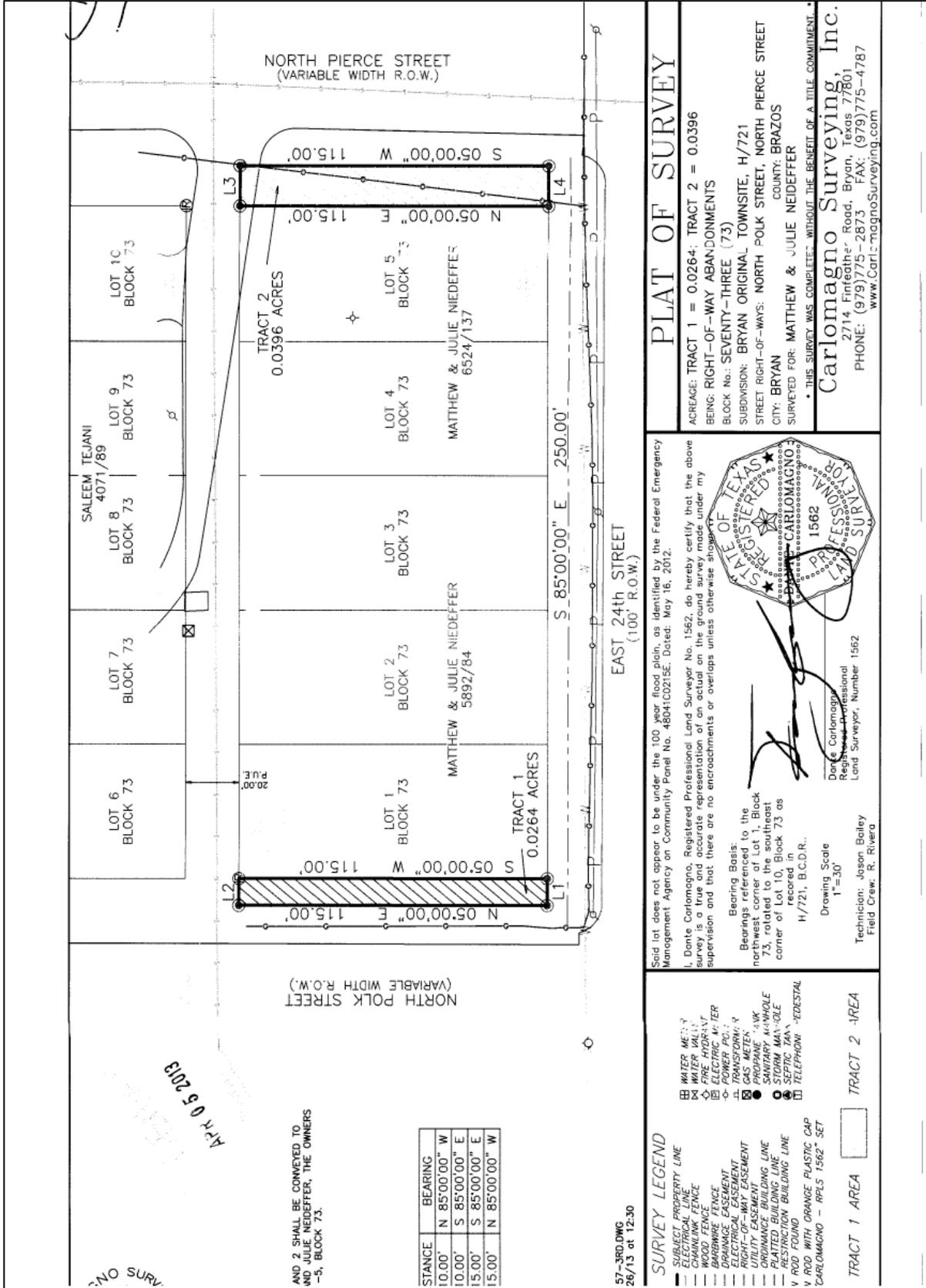
THENCE severing the said right-of-way of North Pierce Street the following calls and distances:

South 85°00'00" East, a distance of 15.00 feet to a 5/8" iron rod with an orange plastic cap marked "Carlomagno RPLS 1562" set for the northeast corner of this tract;

South 05°00'00" West, a distance of 115.00 feet to a 5/8" iron rod with an orange plastic cap marked "Carlomagno RPLS 1562" set for the southeast corner of this tract;

North 85°00'00" West, a distance of 15.00 feet to the PLACE OF BEGINNING containing 0.0396 acres.

Exhibit "B":



PLAT OF SURVEY

ACREAGE: TRACT 1 = 0.0264; TRACT 2 = 0.0396
BEING: RIGHT-OF-WAY ABANDONMENTS
BLOCK No.: SEVENTY-THREE (73)
SUBDIVISION: BRYAN ORIGINAL TOWNSITE, H/721
STREET RIGHT-OF-WAYS: NORTH POLK STREET, NORTH PIERCE STREET
CITY: BRYAN COUNTY: BRAZOS
SURVEYED FOR: MATTHEW & JULIE NIEDEFFER

Carlomagno Surveying, Inc.
2714 Finfeather Road, Bryan, Texas 77801
PHONE: (979)775-2873 FAX: (979)775-4787
www.CarlomagnoSurveying.com

Said lot does not appear to be under the 100 year flood plain, as identified by the Federal Emergency Management Agency on Community Panel No. 48041C0215E, Dated: May 16, 2012.

I, Dante Carlomagno, Registered Professional Land Surveyor No. 1562, do hereby certify that the above survey is a true and accurate representation of an actual on the ground survey made under my supervision and that there are no encroachments or overlaps unless otherwise shown.

Bearing Basis:
Bearing referred to the northwest corner of Lot 1, Block 73, related to the southeast corner of Lot 10, Block 73 as recorded in H/721, B.C.D.R.

Drawing Scale 1"=30'

Technician: Jason Bailey
Field Crew: R. Rivera



- SURVEY LEGEND**
- SUBJECT PROPERTY LINE
 - CROWNED FENCE
 - WOOD FENCE
 - BARBWARE FENCE
 - DRAINAGE EASEMENT
 - ELECTRICAL EASEMENT
 - UTILITY EASEMENT
 - ORDNANCE BUILDING LINE
 - PLATTED BUILDING LINE
 - RESTRICTION BUILDING LINE
 - V ROD FOUND
 - V ROD WITH ORANGE PLASTIC CAP
 - CARLOMAGNO - RPLS 1562 - SET
- TRACT 1 AREA TRACT 2 AREA

**EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING
MINUTES OF MAY 16, 2013:**

4. CONSENT AGENDA.

B. Right-of-Way Abandonment RA12-07: N. Polk and N. Pierce Streets

R. Haynes

A request to abandon a 10' x 115' portion of North Polk Street right-of-way extending north from its intersection with East 24th Street and adjacent to Lot 1 in Block 73 of Bryan Original Townsite, and a 15' x 115' portion of North Pierce Street right-of-way extending north from its intersection with East 24th Street adjacent to Lot 5 in Block 73 of Bryan Original Townsite in Bryan, Brazos County, Texas.

Commissioner Jones moved to approve the Consent Agenda. Commissioner Gonzalez seconded the motion. The motion passed unanimously.

May 16, 2013

Right-of-way Abandonment case no. RA12-07: Lot 1-5, Block 73 of Bryan Original Townsite

LOCATION: a request to abandon a 10' x 115' portion of North Polk Street right-of-way extending north from its intersection with East 24th Street and adjacent to Lot 1 in Block 73 of Bryan Original Townsite, and a 15' x 115' portion of North Pierce Street right-of-way extending north from its intersection with East 24th Street adjacent to Lot 5 in Block 73 of Bryan Original Townsite

APPLICANT(S): Matthew and Julie Neideffer

STAFF CONTACT: Randy Haynes, Staff Planner



BACKGROUND:

Mr. and Mrs. Neideffer own Lots 1 thru 5 in Block 73 of Bryan Original Townsite on the north side of East 24th Street between North Polk and North Pierce Streets, including a single-family home currently addressed as 700 E. 24th Street. They are requesting the City to abandon a 10' x 115' portion of North Polk Street right-of-way adjacent to Lot 1 in Block 73 of Bryan Original Townsite, and a 15' x 115' portion of North Pierce Street right-of-way adjacent to Lot 5 in Block 73 of Bryan Original Townsite. The Neideffers have requested these abandonments to be able to integrate these two strips of land 1,150 square feet and 1,750 square feet in area, respectively, with their ownership of adjoining land.

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. At a minimum, right-of-way abandonments should not interfere with the smooth circulation of vehicular and pedestrian traffic.

ANALYSIS:

The subject rights-of-way requested to be abandoned have never been improved for vehicle access. Both North Polk and North Pierce Street are each 80 feet in width. City of Bryan design guidelines require only 50-foot wide rights-of-way for local streets. The adjacent portion of North Polk Street currently has approximately 18-feet of pavement, which is less than the 27 feet of pavement required for new local streets. The adjacent portion of North Pierce Street currently has approximately 22 feet of pavement.

Even if the requested abandonment of these subject rights-of-way were approved by the City Council, there would still be sufficient right-of-way remaining for possible widening of both streets to modern local street standards (70 feet and 65 feet of right of way, respectively) in the future. Abandoning the subject rights-of-way, therefore, should not substantially interfere with the smooth circulation of vehicular and pedestrian traffic in this vicinity.

There are currently no public utility services located within these street segments. The attached survey shows an ATMOS gas line in the North Pierce Street right-of-way requested to be abandoned. If this right-of-way is abandoned, then a suitable easement need to be reserved to ensure access for repairing and replacing utilities and prevent the construction of buildings to interfere with access to these utilities.

RECOMMENDATION:

The Site Development Review Committee and staff recommend **approving** the request to abandon these public street rights-of-way, as requested, **subject to** the reservation of a public utility easement, as follows:

- **a public utility easement for the entire width and length of the right-of-way for North Pierce Street proposed to be abandoned, to accommodate existing ATMOS gas line facilities.**

Excess right-of-way burdens the public with possible continued maintenance, liability concerns, and is an inefficient use of urban land. The rights-of-way requested to be abandoned have never been improved with a driving surface, are not encumbered by any public or private utilities and have been functionally integrated with the adjacent property. Abandoning the subject rights-of-way, as recommended, will allow this land to be formally integrated with adjacent land. Staff contends that the recommended rearrangement of land will have the most likely long-range public benefit.