

Who Owns That Vacated Street?

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Five examples illustrate what can happen to the fee ownership when a street is vacated.

Most of us are not involved with monumental right of way projects that have ribbon-cutting ceremonies, speeches, pictures, and newspaper reporters, followed by lavish banquets. However, we do on a day-to-day basis make decisions or give advice that can and often will last for a life time. One such area of advice may go something like this, "You own your property to the center line of the street and when it is vacated, title to the street reverts back to you."

So, the street or alley has just been vacated and the abutting property owner now owns that vacated portion of the street to the center line. Are we saying to the center line of the improvement, if the street is improved, or are we saying to the center line of the right of way, or to the original property line.

Perhaps this part of the answer is not as obvious as it appears, but there is a bigger problem and that is the problem of ownership.

I have been involved with the acquisition of highways, streets, and alleys for more than 20 years, and I have also been involved with the vacation proceedings for streets and alleys for the same period of time. Some of those streets were thought to be permanent and would never be vacated.

When a public street is vacated or abandoned (used synonymously), title to the underlying fee is unchanged. Only the public use is vacated, and as a general rule, the owner of the land abutting a street is pre-

sumed to own to the center line of the street.

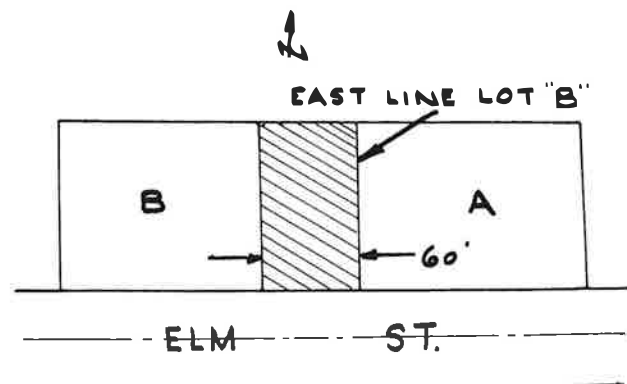
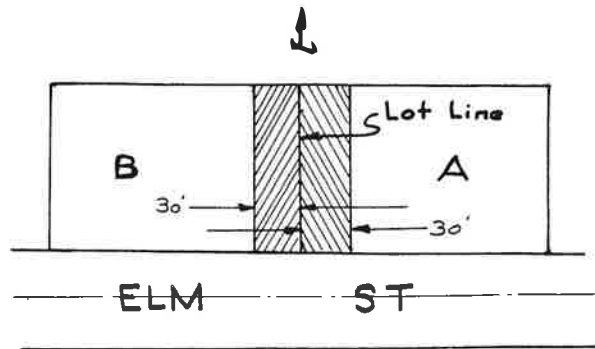
The conveyance of a lot or parcel abutting a street generally will convey this underlying fee title to the center of the street unless a different intent is expressed in the grant. I will discuss this point because I have witnessed too many horror stories with the ownership of a vacated street.

Let us say that the owner of lot "A" grants an easement over the west 30 feet to the city; for road purposes and at a later

date, the owner conveys lot "A" to another party, except the west 30 feet and subsequent owners use the same description. The same process is followed in the chain of title by parcel "B." The street is now vacated and of course the abutting property owner now owns the vacated 30 feet adjacent to his property—correct? Answer—No! The title to the vacated street would pass to the original grantor because of the exception.

This is what is known as a "cut off" legal. "So what," you may ask. Imagine that the original conveyance took place in 1923 and the owners died in 1937, and there were 10 heirs who may be located around the world and some of these heirs are now deceased. The magnitude of the problem now increases to a point where it is nearly impossible to locate the owners of the vacated street. If there was an unlimited amount of time and money, of course the owners could be found, then what ?

Let us now imagine that a property owner wishes to develop his parcel "A" that fronts on a "paper" street; paper street being a street that has been conveyed by maps, documents, or other means, but has never been improved or used. It is there of record, but it cannot physically be seen. The owners on each side of the street agree to the vacation (not that it is totally necessary) and the city vacates the street; how-



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ever, the entire street was conveyed to the city from parcel "B." Plans were prepared for the development of parcel "A," predicated that one-half of the street would "revert" back to parcel "A." The street is vacated, easy enough, but now who owns this street? There is a very strong case supporting the fact that the owners of parcel "A" may not own any portion of the vacated street because of how the street was originally conveyed.

The west 40 feet of parcel "A" was conveyed to the city for road purposes in 1940 and the east 20 feet came from parcel "B" in 1957. The owners of "A and B" petitioned the city to vacate the street and the street was vacated in 1984. The owners of parcels "A and B" had planned to share the ownership of one-half of the street that they thought would "revert" back to them. This was necessary for "B" to develop his parcel. Again, it is questionable as to ownership. It would appear that of the 60 feet vacated, owner "A" would get 40 feet and owner "B" would get 20 feet.

This is a common occurrence in the vacation of a street. Tract 1000 was recorded, dedicating all of Oak, Olive, and Maple streets to the city. That portion of Maple street was vacated within the last 3 years. Who owns the underlying fee title (vacated portion of the street)? The owner of lot 1 claims ownership, and it appears to be a valid claim.

Encompassing all of the above, however, there is an outside problem that is overlooked at times. The acquisitions took place in 1932 in the State of California. The developer wishes to construct a shopping center on the entire site. The city has approved of the vacation, i.e., finding of fact stating that the street is no longer necessary for present or future purposes, and the necessary hearing took place and the final resolution is adopted and recorded. Because the city acquired several of the parcels by grant deed, there were quit claim deeds conveying the city's interest to the abutting property owners. The title acquired by the city in these various documents are again questionable, because the state, counties, and cities could only receive an easement for public rights of way according to the California Street and Highway Code, Section 905 which was repealed in 1961 (formerly political Code Section 2631).

Could those problems have been prevented? Not entirely, but so what? The point is that it takes time to solve this type

of problem, and time will surely pass without asking for permission. Sure it can be said, "so what," "sue me," or a title company will gamble on the ownership, and besides what the lender does not know will not hurt him. The problems are not so insurmountable that the owner, developer, or lender could not have solved them had the problems been known up front.

I do agree that this is an oversimplification of a possibly complex problem, but with an unprecedented growth pattern taking place, the antiquated saying, "Once it is under 6 inches of concrete no one will care" is less than correct. This statement and "So what" surely haunts us today.

What about private rights of way, utility easements, reservations thereof, prior rights, sewer easements, those streets acquired by the County and subsequently annexed to a city, and other situations that may affect the title to a vacated street?

I tell all petitioners to check the records or have them ask a title company, "Who will they insure as to ownership after the street has been vacated?"

There are many ramifications that may be involved within that simple vacation of a street or alley that could be overlooked, and to walk cautiously when giving advice in this matter is surely an understatement. (IRWD)

