

June 21, 2023

REPORT TO THE CITY CLERK  
AND THE  
ALLENTOWN CITY PLANNING COMMISSION  
**REQUEST FOR STREET VACATION**

RE: Request for the vacation of Dodge Street from South  
Muhlenberg Street to South 24<sup>th</sup> Street.

Requested by:  
Irene Libach  
427 S Muhlenberg St

Terry Earan  
419 S Muhlenberg St

Prepared by Brian L. Borzak, PLS, Chief Surveyor/Designer  
City of Allentown Department of Public Works

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Report and Recommendations  
Location Map -- Portion of City Block Plan C-72  
Photos  
2000 Map  
Polls  
Attorney Malkames letter for Lori Novak owner of 2415 South Street

HISTORY OF THE STREET PROPOSED TO BE VACATED:

The subject Dodge Street is in the 18<sup>th</sup> Ward. Unopened Dodge Street has a 20.0' wide Right of Way and was mapped by the Hamilton Park Manor Plan in 1928 as part of Salisbury Township and the Plan and its street system was annexed by the City of Allentown City Ordinance #2556 on January 20, 1930.

LOCATION AND CONDITION:

The subject portion of Dodge Street is an unopened street. The entrance on S Muhlenberg Street has been closed by full depth curb and sidewalk since at least the year 2000. A portion from S 24<sup>th</sup> Street has been open privately and the remaining R/W area is lawn. PP&L has poles within the R/W for 100' +/- from S 24<sup>th</sup> Street.

POLLS CITY OF ALLENTOWN:

Charles Roca, Chief of Police has not replied.

Efrain Agosto, Fire Chief has no objection to the street vacation.

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Dennis Weatherhold, Communications has not replied.

Michael Lichty, Stormwater Engineer has no objection to the street vacation.

Suzanne Dobel, Traffic Project Manager has no objection to the street vacation.

POLLS UTILITIES:

Verizon Communications have no objection to the street vacation.

PPL Electric Utilities objects to the street vacation due to existing facilities and will need an easement for their existing facilities on the eastern end.

UGI Utilities, Inc. have no objection to the street vacation.

LCA ,. have no objection to the street vacation

POLL ADJOINING OWNERS:

Lori Novak, the owner of 2415 South St. has not replied but her attorney by letter stated the City has nothing to vacate. **See letter attached.**

Julio Astacio, the owner of 420 S 24<sup>th</sup> St objects to the street vacation, " I do not want traffic flowing through the driveway! Interfere with my property and reduce property value."

Mirian Mendez & Celeste Mendez, the owners of 428 S 24<sup>th</sup> St has not replied.

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RECOMMENDATIONS:

The Bureau of Engineering recommends that Dodge Street be vacated from S. Muhlenberg Street to the centerline of vacated S Brighton Street. The remaining portion should not be vacated being one owner objected and the Lori Novak property claims a private easement by law. If the Engineering recommendation is accepted no easement will be needed for PP&L.

Very truly yours,

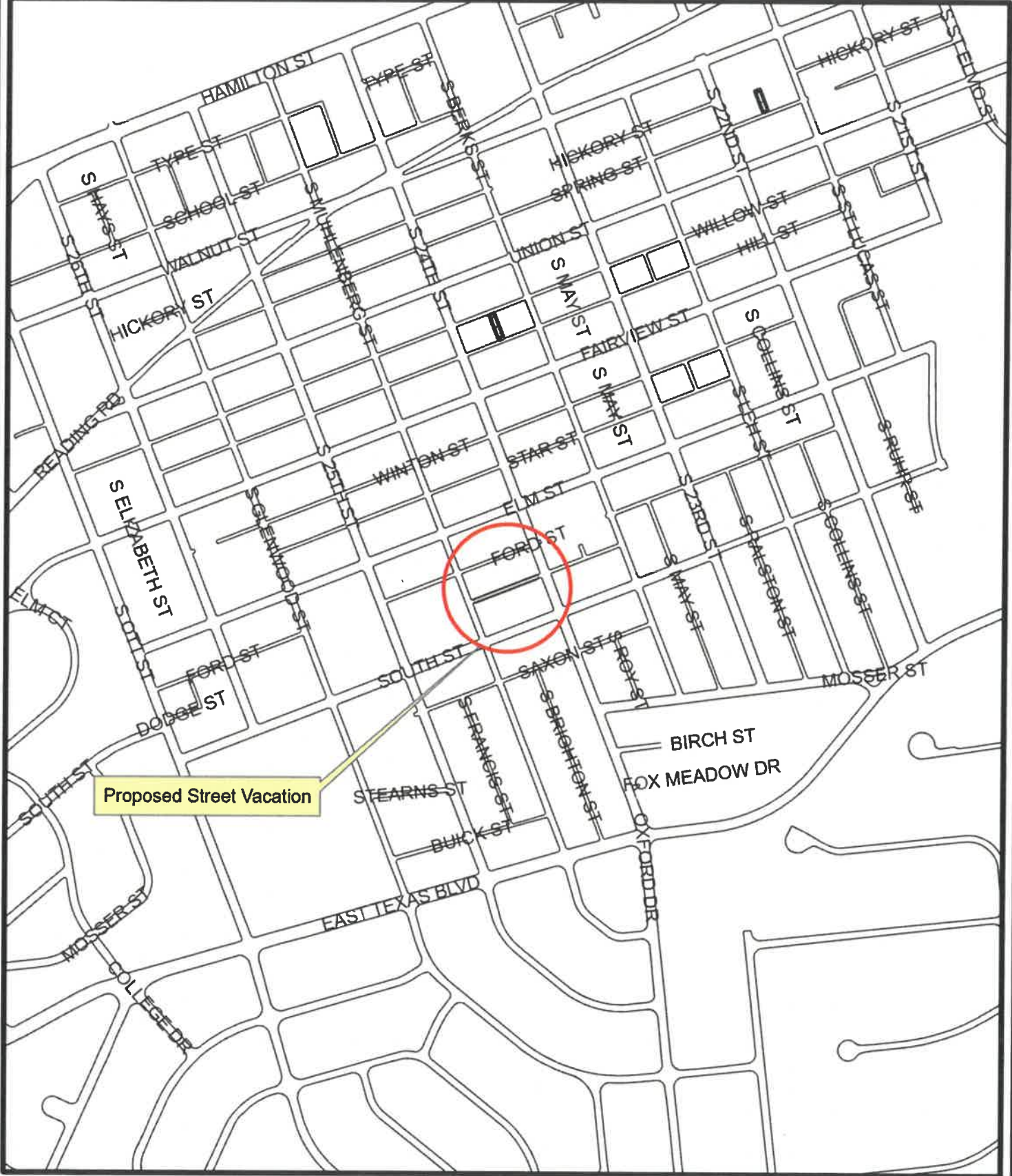


Mark Shahda  
Public Works Director

Attachments

xc: Jennifer Gomez, Planning Director  
Matt Kloiber, City Solicitor  
Michael P. Hanlon, City Clerk  
Mark Shahda, Public Works Director

# CITY OF ALLENTOWN



Proposed Street Vacation

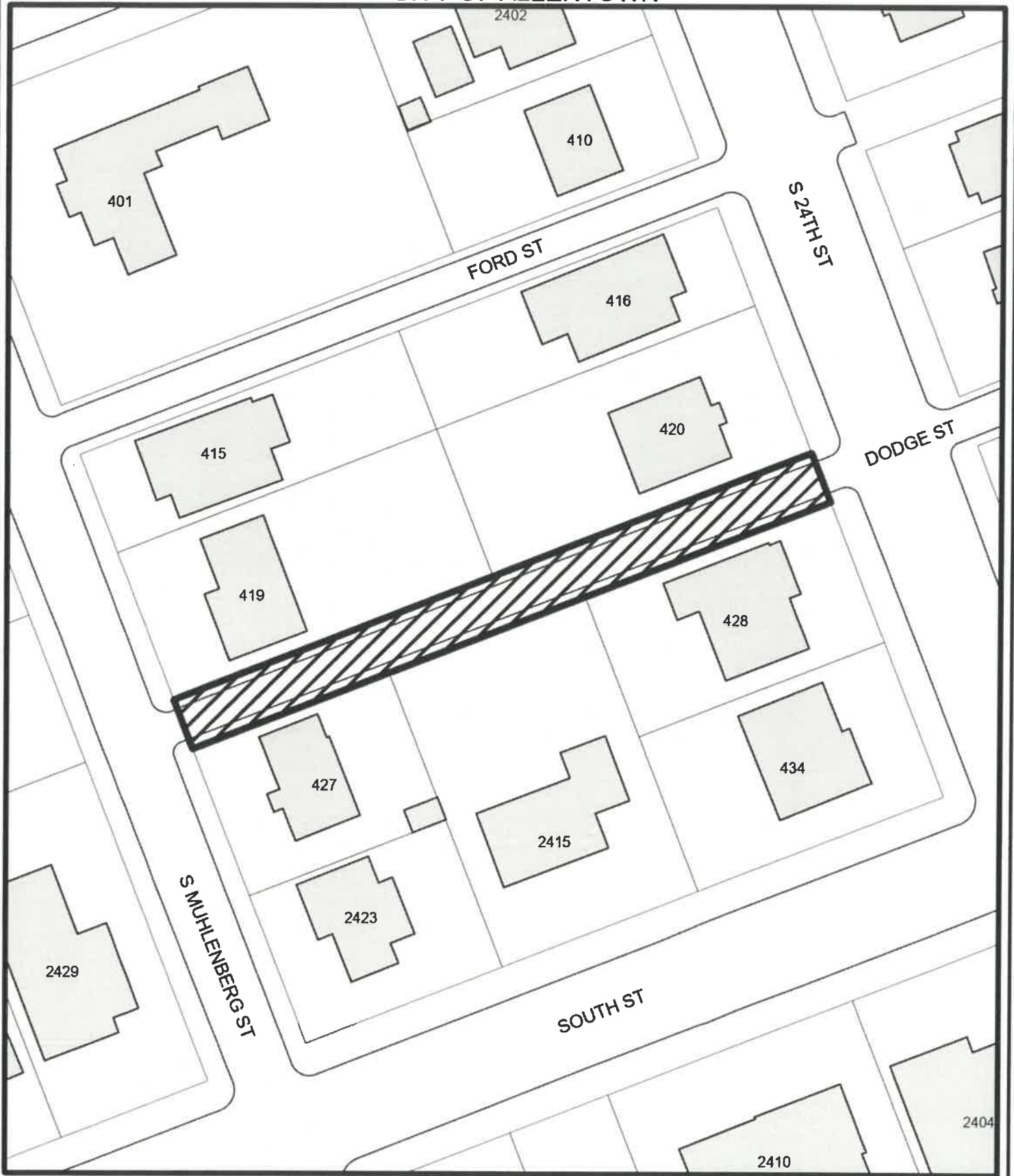


Proposed Street Vacation  
Dodge St  
From S. Muhlenberg St. to S. 24th St.

SCALE:  
1" = 500'



CITY OF ALLENTOWN



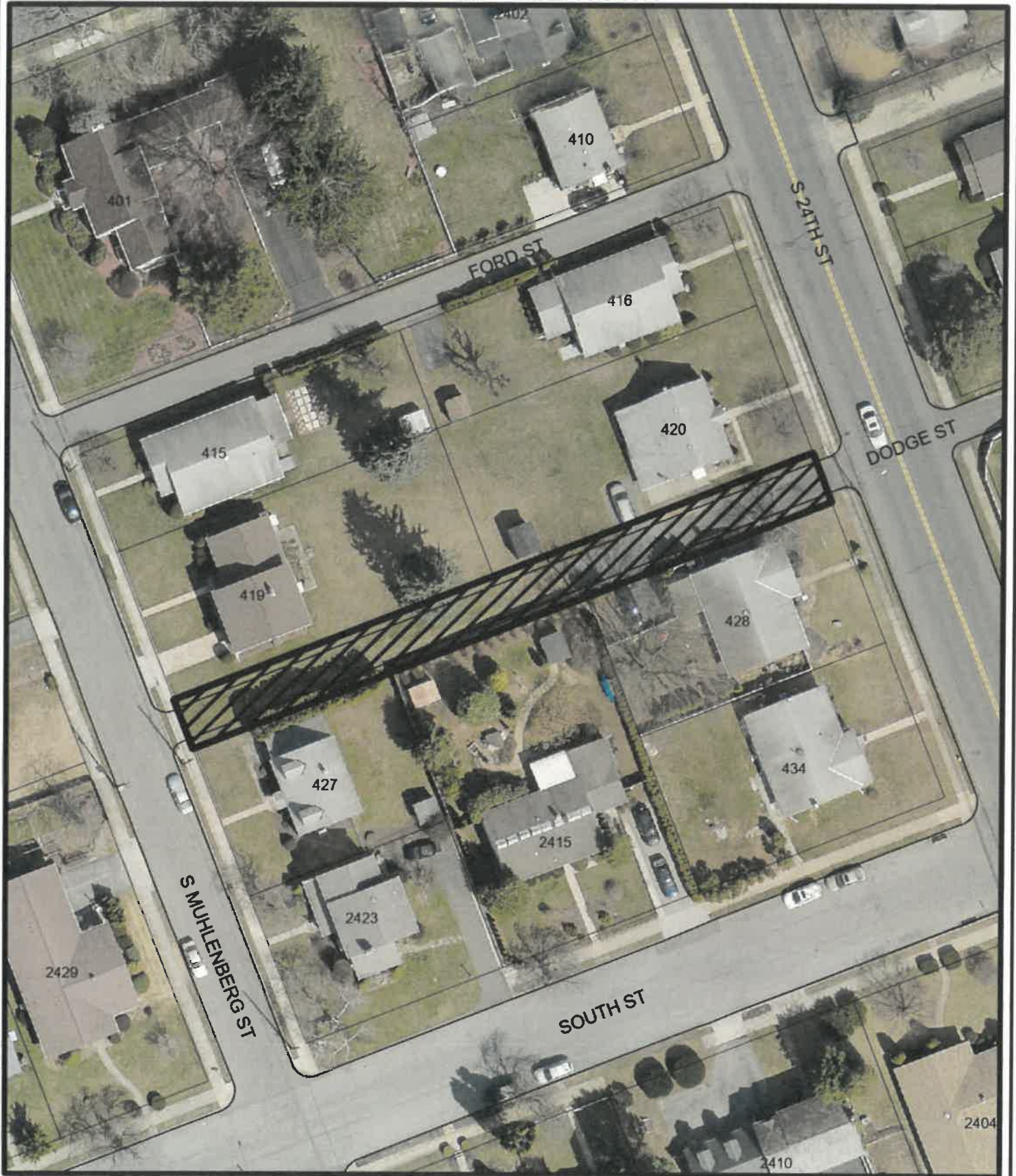
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CITY OF ALLENTOWN



Proposed Street Vacation  
Dodge St  
From S. Muhlenberg St. to S. 24th St.

SCALE:  
1" = 50'





Google Maps 448 S Muhlenberg St

Allentown, Pennsylvania

Google Street View

Sep 2014

See more dates



Image capture: Sep 2014 © 2023 Google

↑  
**PODGE ST**  
**LOOKING**  
**EAST**



426 S 24th St

Allentown, Pennsylvania

Google Street View

Aug 2016

See more dates



Image capture: Aug 2016 © 2023 Google

DODGE ST  
LOOKING  
WEST







**MALKAMES LAW OFFICES**

509 LINDEN STREET

ALLENTOWN, PA. 18101-1415

TELEPHONE (610) 821-8327

FAX (610) 821-5851

E-MAIL: [mkoffice@malkameslaw.com](mailto:mkoffice@malkameslaw.com)

WILLIAM G. MALKAMES  
MARK MALKAMES  
WILLIAM KURT MALKAMES

Brian Borzak  
By Email: [brian.borzakpls@allentownpa.gov](mailto:brian.borzakpls@allentownpa.gov)

June 13, 2023

Re: Dodge Street Vacation

Dear Brian:

I represent Lori A. Novak, owner of the property located 2415 W. South Street, Allentown, Lehigh County, Pennsylvania.

Ms. Novak has brought to me a copy of a proposed street vacation filed by Irene Librach, the owner of 427 S. Muhlenberg Street and Terry Earan, the owner of 419 S. Muhlenberg Street requesting to vacate Dodge Street.

To the best of our knowledge, the City never accepted Dodge Street within the statutory period of 21 years either by creating municipal improvements or by installing any municipal improvements such as water lines or sewer lines. Assuming this is the case, it is my firm belief based on applicable case law (copies enclosed and the recorded subdivision plan, copy enclosed) that the City has nothing to vacate because a municipality cannot vacate something it never accepted.

Under these circumstances, it is also my belief that Ms. Novak has a private easement to use Dodge Street for its full 20 feet width of Dodge Street from S. Muhlenberg Street to S. 24<sup>th</sup> Street.

Under these circumstances, she will not sign and she will oppose any effort on anybody's part to restrict her private easement to use of the full width of Dodge Street from S. Muhlenberg Street to S. 24<sup>th</sup> Street.

Please respond at your convenience.

Very truly yours,



William G. Malkames, Esquire

WGM/jls

cc: Irene Librach, by mail  
Terry Earan, by mail

## NON-POSSESSORY RIGHTS § 5.02(b)

Pa. 334 (1918). If the street is opened later, the grantee's title thereupon extends to the middle of the street. See *Hancock v. City of Philadelphia*, 175 Pa. 124 (1896).

Where an owner records a plan and sells lots according to the plan, the owner is presumed to have intended dedication of the roads shown on the plan to public use and a purchaser of a lot bounded by such a road takes title to the middle of the road and is entitled to the use of the road by the public. *Rahn v. Hess*, 378 Pa. 264 (1954); *Maier v. Walborn*, 84 Pa.Super. 522 (1925). The result is different when the lots are not sold in accordance with the plan. *Sedwick v. Blaney*, 177 Pa.Super. 423 (1955). The use by the public is intended as a benefit to the lot owner and not as an independent right in the public. See *Stozenski v. Borough of Forty Fort*, 456 Pa. 5 (1974), citing *Chambersburg Shoe Mfg. Co. v. Cumberland Valley R.R. Co.*, 240 Pa. 519 (1913). Consequently the public has no right to enforce it. See *Bieber v. Zellner*, 421 Pa. 444 (1966).

If the streets or alleys have not been previously opened or projected as public streets, but are merely plotted by the grantor, the grantee acquires an easement over all of the streets of the plan as a private right of property arising out of the grant, and this easement is independent of the public right. *Vogel v. Haas*, 456 Pa. 585 (1974); *Brodie v. Brown*, 404 Pa. 391, 394-5 (1961); *Cohen v. Simpson Real Estate Corp.*, 385 Pa. 352, 355 (1956); *Drusedum v. Guernaccini*, 251 Pa.Super. 504 (1977). See also *Fidelity-Philadelphia Trust Co. v. Forster*, 346 Pa. 59 (1943), and *Dulany v. Bishoff*, 165 Pa.Super. 207 (1949). For the statute of limitations on actions to enforce an easement in a vacated public highway, see 53 P.S. § 1948 and 53 P.S. § 1946. In the case of *Kao v. Haldeman*, 556 Pa. 279, 284-85, 728 A.2d 345, 348-49 (1999), it was held that where an easement is a private road, not dedicated to public use, individuals who do not hold an ownership interest in the easement may be excluded from the easement. This easement over roads in a subdivision extends to all owners who bought land according to the plan, regardless of whether their lots were abutting the easement. See *Potis v. Coon*, 344 Pa.Super. 443, 454, 496 A.2d 1188, 1195 (1985). But if there has been a prior opening or projection by a municipality or a dedication by a private owner and acceptance by a municipality, of streets and alleys appearing on a plan of lots, a subsequent purchaser of a lot acquires no private right or easement over those streets or alleys. *Cohen v. Simpson Real Estate Corp.*, 385 Pa. 352, 356 (1956). Note that land dedicated to public use as a way is taken by the public without warranty or representation by the dedicator as to condition or fitness. *City of Pittsburgh v. Veri*, 25 Pa. D. & C. 2d 121 (1961). But see *Hankin v. Harbison*, 443 Pa. 196, 199 (1971).

Where a street has not been opened to or used by the public for more than twenty-one years, the right of the public is lost. For this proposition see the following repealed statute and cases: 36 P.S. § 1961, repealed in part by the Act of May 14, 1915, P.L. 312, insofar as it relates to boroughs. The Act is not applic-



§ 5.02(b) CREATION OF EASEMENTS

able to a conveyance of a street bed to a municipality by deed when the deed has been accepted by the municipality; in such a case, title will remain in the municipality even though the street is not physically opened: *Carrdorini Appeal*, 189 Pa.Super. 624 (1959). The Act also does not terminate private easements over the streets in a subdivision plan. *Travaglia v. Weinel*, 191 Pa.Super. 323 (1959); *Estojak v. Mazsa*, 522 Pa. 353, 361, 562 A.2d 271, 274 (1989) (private rights of easement are retained after failure by municipality to accept or open dedicated street within twenty-one years); *Borough of Edgeworth v. Lilly*, 129 Pa.Cmwlth. 361, 565 A.2d 852, 857 (1989) (an easement may be extinguished by adverse possession but not by non-use).

In *Murphy v. Martini*, 884 A.2d 262 (Pa.Super. 2005), it was held that a street becomes public when it is dedicated to public use and accepted by the municipality, and if the street is not accepted within 21 years, the land is discharged from such servitude, and the dedicated portion of it has entirely lost its character as a public street. 36 P.S. § 1961. Likewise in *Smith v. Borough of New Hope*, 879 A.2d 1271 (Pa.Cmwlth. 2005), the court held that the purpose of a statute imposing a 21-year time limit for the borough to accept dedication of street is to relieve the land from the burden of public servitude created by a dedication in which the dedicated streets have been laid out but not opened. This said, if the street actually existed on the ground rather than on paper, the 21-year statute of limitations does not apply. 36 P.S. § 46724.

The owners of the property within the plan or subdivision retain private rights of easement by implication over the unopened streets. See *Estojak v. Mazsa*, 522 Pa. 353, 562 A.2d 271 (1989). A municipality thereafter wishing to open the street to public use may do so only by eminent domain proceedings. *Whittaker Appeal*, 386 Pa. 403 (1956). Conversely, a street may become a public street if there is adverse use by the public for more than twenty-one years. See *Donohugh v. Lister*, 205 Pa. 464 (1903).

It may be noted that the public easement in a street or sidewalk is for use of the public generally, and not for use by another person who, although a member of the public, uses it for a purpose special to himself (such as a newsstand) and not common to all citizens. *Kay Realty Corp. v. Elster*, 24 Pa. D. & C. 2d 693 (1960). *Damulewicz v. Kozeniewski*, 13 Pa. D. & C. 2d 264 (1957). For a discussion of the public easement in a sidewalk, see *RKO-Stanley Warner Theatres, Inc. v. Mellon Nat. Bank & Trust Co.*, 436 F.2d 1297 (3d Cir. 1970).

The same rules prevail where the boundary is an alley. *Oliver v. Ormsby*, 224 Pa. 564 (1909); *Saccone v. West End Trust Co.*, 224 Pa. 554 (1909). Where the conveyance runs to and including an alley, the grantee takes title to the soil or bed of the whole alley insofar as his lot abuts it. *Wilson v. Peerless Co.*, 240 Pa. 473 (1913). These rules also apply where the description calls for a non-navigable stream. *City of Johnstown v. Fearl*, 317 Pa. 154 (1939); *Edwards v. Woodruff*, 25 Pa.Super. 575 (1904).