

## ORDINANCE 8-2019

### **AN ORDINANCE CLOSING AND ABANDONING A PORTION OF AN ALLEY RIGHT-OF-WAY BETWEEN 1121 MOSELEY STREET AND 416 EAST 11<sup>TH</sup> STREET IN THE CITY OF OWENSBORO, KENTUCKY, AT THE REQUEST OF HAYDEN DEVELOPMENT, LLC.**

**WHEREAS**, there presently exists an alley that is located between 1121 Moseley Street and 416 East 11<sup>th</sup> Street that is dedicated for public use by the City of Owensboro, with the portion of said alley sought to be closed and abandoned; and

**WHEREAS**, Hayden Development, LLC has petitioned the City of Owensboro, Kentucky, pursuant to KRS 82.405(1) and (2) for the closing and abandoning of a 20 foot wide north/south alley (.044 acres) as shown on the proposed alley closing exhibit prepared by Bryant Engineering, Inc., attached hereto and incorporated herein by reference as Exhibit A; and

**WHEREAS**, it appears that the closing of the public alley right-of-way described herein is in the best interest of the residents of the City of Owensboro, Kentucky; and

**WHEREAS**, it appears that the closing of the public alley right-of-way would enhance the value of the properties affected thereby and would not create a hardship on any persons with any interest therein; and

**WHEREAS**, in addition to the Petitioner, Terry and Mary Schrecker, is the only other property owner adjacent to the alley proposed to be closed and they have given written notarized consent to the closing and abandoning of said public right-of-way as evidenced in the *Consent of Abutting Property Owners to Closure of Public Right-of-Way* heretofore filed, copy of which is attached and incorporated by reference as Exhibit B; and; and

**WHEREAS**, pursuant to KRS 82.405(2) the Board of Commissioners of the City of

Owensboro, Kentucky, makes the following findings of fact:

1. That Hayden Development, LLC, the Petitioner herein, and Terry and Mary Schrecker are the only property owner abutting and adjoining the portion of the public alley right-of-way sought to be closed and abandoned and have previously petitioned or given written notarized consent to the closing and abandonment of the public alley right-of-way described hereinabove.
2. That the closing of the public alley right-of-way sought herein is in the best interest of the residents of the City of Owensboro, Kentucky, and would not create a hardship on either the adjoining property owners or other persons with an interest therein.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1.** The findings of fact recited hereinabove are hereby adopted, affirmed, and incorporated by reference herein.

**Section 2.** The hereinafter described public alley right-of-way be, and is hereby ordered to be officially closed and abandoned pursuant to the provisions of KRS 82.405(2):

The public alley right-of-way hereby ordered closed is described as follows:

Beginning at a calculated point being in the east right of way line of a 20-foot alley and being in the west property line of the Terry and Mary Schrecker property, as recorded in Deed Book 934, at Page 964 in the Office of the Daviess County Clerk and also being South 03 Degrees 22 Minutes 04 Seconds East, a distance of 120.06 Feet from the northwest corner of said Schrecker Property; thence with said west line South 03 Degrees 22 Minutes 04 Seconds East, a distance of 96.77 feet to a calculated point being in the east line of the Hayden Development Co., LLC property, as recorded in Deed Book 943, at Page 696 in said Clerk's Office; thence with said east line South 86 Degrees 37 Minutes 56 Seconds West, a distance of 20.01 feet to a calculated point; thence continuing with said east line North 03 Degrees 22 Minutes 04 Seconds West, a distance of 96.77 feet to a

calculated point being in the west line of said 20-foot alley; thence severing said alley North 86 Degrees 38 Minute 56 Seconds East, a distance of 20.01 feet to the point of beginning and containing 1,936 square feet or 0.044 Acres.

**Section 3.** A copy of this Ordinance shall be recorded in the office of the Daviess County Court Clerk.

**Section 4.** All ordinances or parts of ordinances in conflict herewith, are hereby repealed to the extent of such conflict.

**INTRODUCED AND PUBLICLY READ ON FIRST READING,** this the 7<sup>th</sup> day of May, 2018.

**PUBLICLY READ AND APPROVED ON SECOND READING,** this the 21<sup>st</sup> day of May, 2018.

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Thomas H. Watson, Mayor

ATTEST:

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Beth Cecil, City Clerk

I, Beth Cecil, City Clerk, of the City of Owensboro, Kentucky, do hereby certify that the foregoing is a true and correct copy of Ordinance 3-2018, duly adopted by the Board of Commissioners of the City of Owensboro, Kentucky, on February 6, 2018, the original of which is on file in the office of the City Clerk, this \_\_\_\_ day of \_\_\_\_\_, 2018.

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Beth Cecil, City Clerk

**Consent**

**CITY OF OWENSBORO  
AGENDA REQUEST AND SUMMARY  
COVER SHEET**

**Item No.****TITLE**

PROPOSED CLOSING OF A PORTION OF ALLEY RIGHT OF WAY BETWEEN  
1121 MOSELEY STREET AND 416 EAST 11<sup>TH</sup> STREET

**MEETING OF CITY COMMISSION ON** *(State the meeting date May 7, 2019*  
**BUDGET** *(State any budget consequences): N/A*

**SUMMARY AND BACKGROUND** *(Continue on additional sheet, if necessary):*

A request has been received from the Hayden Development, LLC, for consideration to close a section of alley right of way adjacent to 1121 Moseley Street, being 20 foot wide and described below:

The proposed alley rights of way is described beginning at a calculated point being in the east right of way line of a 20-foot alley and being in the west property line of the Terry and Mary Schrecker property, as recorded in Deed Book 934, at Page 964 in the Office of the Daviess County Clerk and also being South 03 Degrees 22 Minutes 04 Seconds East, a distance of 120.06 Feet from the northwest corner of said Schrecker Property; thence with said west line South 03 Degrees 22 Minutes 04 Seconds East, a distance of 96.77 feet to a calculated point being in the east line of the Hayden Development Co., LLC property, as recorded in Deed Book 943, at Page 696 in said Clerk's Office; thence with said east line South 86 Degrees 37 Minutes 56 Seconds West, a distance of 20.01 feet to a calculated point; thence continuing with said east line North 03 Degrees 22 Minutes 04 Seconds West, a distance of 96.77 feet to a calculated point being in the west line of said 20-foot alley; thence severing said alley North 86 Degrees 38 Minute 56 Seconds East, a distance of 20.01 feet to the point of beginning and containing 1,936 square feet or 0.044 Acres.

Terry and Mary Schrecker, the owner of property at 416 East 11<sup>th</sup> street, the only other properties abutting to the proposed alley right of way to be closed has signed and submitted a Consent of Abutting Property Owner forms for the proposed closing.

The request has been forwarded to all City departments and City Utilities. No objections were noted to the closing of the public alley rights of way. No easement will need to be retained for the alley right of way.

**Steve Lynn, City Attorney DRAFTED THE ORDINANCE FOR CLOSURE**

**Check if continued on next page**

**RECOMMENDATION OR ACTION REQUESTED:***(State the action requested or recommended)*

APPROVE CLOSURES

**ATTACHMENTS** *(12 copies for agenda packets)***Check if no attachments**

CLOSURE REQUEST & CONSENT FORMS, ORDINANCE FOR CLOSURE, LETTER AND  
PLAT ARE ATTACHED.

**Note:** All City Commission Agenda items submitted by staff, including appropriate backup materials, must be approved and submitted to the City Clerk not later than noon Thursdays preceding Tuesday, 6:30 p.m. meetings.

Submitted by	Department Head Approval	City Attorney Approval	City Manager Approval
MICHAEL HAMILTON	KEVIN COLLIGNON	STEVE LYNN	NATE PAGAN



Engineering Department  
Phone (270) 687-8641  
Fax (270) 687-8579

# City of Owensboro Kentucky



101 E. 4<sup>th</sup> Street  
P.O. Box 10003  
Owensboro, Ky 42302-9003

## MEMORANDUM

**TO:** Nate Pagan, City Manager

**FROM:** Kevin Collignon, P.E., City Engineer

**DATE:** April 11, 2019

**RE:** Proposed closing of a portion of alley right-of-way: between 1121 Moseley Street and 416 East 11<sup>th</sup> street.

A request has been received from the Hayden Development, LLC, for consideration to close a section of alley right of way adjacent to 1121 Moseley Street, being 20 foot wide and described below:

The proposed alley rights of way is described beginning at a calculated point being in the east right of way line of a 20-foot alley and being in the west property line of the Terry and Mary Schrecker property, as recorded in Deed Book 934, at Page 964 in the Office of the Daviess County Clerk and also being South 03 Degrees 22 Minutes 04 Seconds East, a distance of 120.06 Feet from the northwest corner of said Schrecker Property; thence with said west line South 03 Degrees 22 Minutes 04 Seconds East, a distance of 96.77 feet to a calculated point being in the east line of the Hayden Development Co., LLC property, as recorded in Deed Book 943, at Page 696 in said Clerk's Office; thence with said east line South 86 Degrees 37 Minutes 56 Seconds West, a distance of 20.01 feet to a calculated point; thence continuing with said east line North 03 Degrees 22 Minutes 04 Seconds West, a distance of 96.77 feet to a calculated point being in the west line of said 20-foot alley; thence severing said alley North 86 Degrees 38 Minute 56 Seconds East, a distance of 20.01 feet to the point of beginning and containing 1,936 square feet or 0.044 Acres.

Terry and Mary Schrecker, the owner of property at 416 East 11<sup>th</sup> street, the only other properties abutting to the proposed alley right of way to be closed has signed and submitted a Consent of Abutting Property Owner forms for the proposed closing.

The request has been forwarded to all City departments and City Utilities. No objections were noted to the closing of the public alley rights of way. No easement will need to be retained for the alley right of way.

A copy of the Request for Closure and Consent of Abutting Property owner forms are attached. A copy of an ordinance prepared for the closing and a plat exhibit is attached.

The request is in order for consideration by the Commission.

C: Mayor Thomas H. Watson, City Commissioners, Nate Pagan, Steve Mitchell

REQUEST FOR CLOSURE OF PUBLIC RIGHT-OF-WAY

CITY ENGINEER:

The undersigned hereby requests that the right-of-way described below be closed and that the City Engineer's office make inquiry of all necessary City departments and utilities to determine if there are any reasons why the right-of-way located at: The 20' Public Alley, which lies between PVA#2-4-7-3 and PVA#2-4-7-5, reference Exhibit 'A'.

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should not be closed.

I understand that if I do not own all the land abutting the right-of-way proposed to be closed, I will obtain the consent of all other adjoining landowners on the appropriate form provided by the City. I also agree to provide the City with the names and addresses of all abutting or otherwise affected landowners by the proposed closure.

Once the appropriate consent forms have been executed by all fee simple property owners abutting the right-of-way proposed to be closed, and have been filed with the City, I understand and agree that it shall be my responsibility to obtain and pay for the services of a licensed attorney to prepare the legal documents necessary to close public right-of-way in accordance with KRS 82.405, subject to the approval of the City Attorney.

SIGNED BY:

Vincent Hayden

(PRINTED NAME)

DATE:

3-22-19

ADDRESS:

3830 Vincent Station DR.

Owensboro KY 42303

STATE OF KENTUCKY )

COUNTY OF DAVIESS )

The foregoing instrument was duly signed and acknowledged  
before me in my said County and State by Vincent Hayden

on this the 22nd day of MARCH, 2019.

Stacy Whitworth

Notary Public, State of Kentucky at Large

My commission expires: April 23, 2019





CONSENT OF ABUTTING PROPERTY OWNER (S)  
TO CLOSURE OF PUBLIC RIGHT-OF-WAY

I (We), Terry & Mary Schrecker, do

part or all of which property abuts a part or all of public right-of-way that the City of Owensboro, Kentucky, proposes to abandon and close in conformity with **KRS 82.405**, which right-of-way is more particularly described as follows:

Reference Exhibit 'A'

I (We), as fee simple owner (s) of property in or abutting the portion of public right-of-way to proposed to be closed, do knowingly, voluntarily, and expressly waive my (our) right to written notice of the proposed closing otherwise required by **KRS 82.405 (2) (b)**, and hereby consent to, and join in the request for, the closure of said public right-of-way as proposed herein. I (We) further understand that I (we) are not required to consent to the closure of public right-of-way and may object to same. However, I (we) expressly waive any and all rights to object to the proposed closure.

I (We) further understand and acknowledge, that upon the enactment and publication of an ordinance by the Owensboro Board of Commissioners closing subject right-of-way, unless otherwise agreed, I (we) as abutting landowner (s), will receive by operation of law as my (our) own property, that portion of the right-of-way abutting my (our) property up to the center line of said right-of-way.

I further understand and acknowledge that if other fee simple owner (s) of property in or abutting the public right-of-way proposed to be closed does (do) not approve of the proposed closure, the City reserves the right to withdraw from consideration any ordinance, or dismiss any lawsuit prosecuted herein, unless any one or all of the fee simple owner (s) of property in or abutting the right-of-way proposed to be closed, agrees (agree) to indemnify and hold the city of Owensboro harmless from any and all damages assessed against it by virtue of the initiation of eminent domain proceedings pursuant to **KRS 82.405 (3) and (4)**.

I (We) further understand and acknowledge that the City of Owensboro reserves the right to deny or qualify any request for closure of public right-of-way, if upon inquiry from all necessary City departments, utilities, and all abutting or affected property owners, it is determined that it is not in the best interest of the city to close public right-of-way or the retention of public or private utility easements or required to accommodate municipal services.

In testimony whereof, witness my (our) signature (s) on this 22  
Day of March, 2019.

PROPERTY OWNER (S) :

Terry Schrecker  
Mary Schrecker

STATE OF KENTUCKY     )  
  )  
COUNTY OF DAVIESS     )

The foregoing instrument was signed and acknowledged before me  
by Terry Schrecker, Mary Schrecker  
On this the 22 day of March, 2019.

Kathy P. Howard  
NOTARY PUBLIC, State at Large  
My Commission expires: 2-14-22  
595311

## EAST 11th STREET

(53' RIGHT-OF-WAY)

26.5'

EXISTING 20' PUBLIC ALLEY

SEABOARD SYSTEM  
RAILROAD, INC.  
D.B. 174, PG. 248  
PVA #2-4-7-4

N 86°38'56" E  
20.01'

**0.044 ACRES**  
**1,936 SQFT**

N 03°22'04" W  
96.77'

S 03°22'04" E  
96.77'

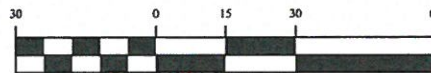
HAYDEN DEVELOPMENT  
COMPANY, LLC.  
D.B. 943, PG. 696  
PVA #2-4-7-3

TERRY & MARY SCHRECKER  
D.B. 934, PG. 964  
P.B. 43, PG. 98  
PVA #2-4-7-5

S 86°37'56" W  
20.01'

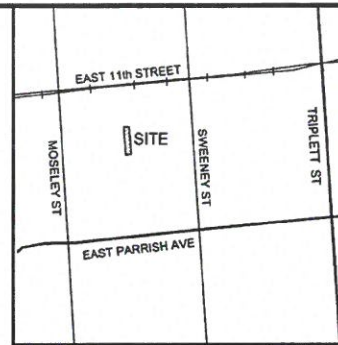
CLOSED PORTION OF ALLEY TO BE RETAINED  
AS A PRIVATE DRAINAGE EASEMENT

### GRAPHIC SCALE



(IN FEET)

1 inch = 30 feet



VICINITY MAP

## EXHIBIT 'A' PROPOSED ALLEY CLOSING

03-22-2019

COMPLIES WITH  
201 KAR18:150  
SECTION 13  
NOT A BOUNDARY SURVEY  
NOT FOR TRANSFER OF  
REAL PROPERTY

**PREPARED BY:**

J. WILLIAM WEIKEL, JR, KY P.L.S. NO. 2813

DATE



1535 FEDERICA STREET - P.O. BOX 21382  
OWENSBORO, KENTUCKY 42304

(270) 685-2811