

ORDINANCE 3-2021

AN ORDINANCE CLOSING AND ABANDONING A PORTION OF AN ALLEY RIGHT-OF-WAY BETWEEN 1701 BRECKENRIDGE STREET AND 1714 HALL STREET IN THE CITY OF OWENSBORO, KENTUCKY, AT THE REQUEST OF HABITAT FOR HUMANITY OF OWENSBORO.

WHEREAS, there presently exists an alley that is located between 1701 Breckenridge Street and 1714 Hall Street that that is dedicated for public use by the City of Owensboro, with section of said alley sought to be closed and abandoned; and

WHEREAS, Habitat for Humanity of Owensboro has petitioned the City of Owensboro, Kentucky, pursuant to KRS 82.405(1) and (2) for the closing and abandoning of a portion of a north/south alley (0.009 acres). Further, Habitat for Humanity of Owensboro will be dedicating public right-of-way with a future plat for East 17th Street along with additional alley right of way to realign the alley right-of-way. The closing and abandoning and future realignment of the alley right of way are 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, Habitat for Humanity of Owensboro is the owner of the only lots that adjoin and abut the portion of the public alley right-of-way to be closed, and no other consent is required; and

WHEREAS, the Petitioners understand and agree to dedicate a public utility easement in favor of Atmos Energy over a portion of the alley to be abandoned and closed; and said easement shall be for the purposes of allowing Atmos Energy access to their underground gas lines that service the area; 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 the Petitioner, Habitat for Humanity of Owensboro, is the only property owner abutting and adjoining the portion of the public alley right-of-way sought to be closed and abandoned; and has given written, notarized consent to the closing and abandonment of the public alley right-of-way described hereinabove, a copy of Applicant's Request for Closure of Public Right of Way is attached hereto.
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 the northeast corner of lot 4 of the Habitat for Humanity of Owensboro property, as recorded in Deed Book 1033, at page 749 in the Office of the Daviess County Clerk and being the northwest corner of the right-of-way of a 14-foot alley; Thence with the north right-of-way line of said alley in a curve to the right being subtended by a chord of south 81 degrees 04 minutes 27 seconds east, a chord distance of 13.86 feet and having a radius of 10,562.17 feet, in all an arc distance of 13.86 feet to a calculated point being in said north right-of-way line; Thence severing said right-of-way south 08 degrees 39 minutes 24 seconds west,

a distance of 58.36 feet to a calculated point being in the west right-of-way line of said 14-foot alley and being in the east property line lot 1 of the Habitat for Humanity of Owensboro property, as recorded in Deed Book 1033, at page 749 in said Clerk's office; Thence with said east property line north 04 degrees 41 minutes 25 seconds west, passing through the southeast corner of lot 1 of the Habitat for Humanity of Owensboro property, as recorded in Deed Book 1033, at page 749 in said Clerk's office and continuing on said course for a total distance of 60.15 feet to the point of beginning and containing 404 square feet or 0.009 acres.

Section 3. The Petitioners shall dedicate by Deed of Easement or Plat a public utility easement in favor of Atmos Energy to service underground gas lines. This access easement relates only to the portion of the alley described herein.

Section 4. A copy of this Ordinance shall be recorded in the office of the Daviess County Court Clerk.

Section 5. 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 19th day of January, 2021.

PUBLICLY READ AND APPROVED ON SECOND READING, this the 2nd day of February, 2021.

Thomas H. Watson, Mayor

ATTEST:

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 3-2021, duly adopted by the Board of Commissioners of the City of Owensboro, Kentucky, on February 2, 2021, the original of which is on file in the office of the City Clerk, this 2nd day of February, 2021.

Beth Cecil, City Clerk

EXHIBIT A

CITY OF OWENSBORO

COMMISSION MEETING DATE: 1/19/2021

**AGENDA REQUEST AND SUMMARY SUBMITTED BY: City Engineering Department
– Michael Hamilton**

**TITLE: PROPOSED CLOSING OF A PORTION OF ALLEY RIGHT OF WAY BETWEEN
1701 BRECKENRIDGE STREET AND 1714 HALL STREET**

Ordinance Prepared by: ☒ **City Staff** ☐ **Other Preparer** ☒ **Attachments:** Request for Closure of Public Right of Way Form, Consent of Abutting Property Owner to Closure of Public Right of Way Forms, Consent of Property Owners to the Closure of Public Right of Way in the Immediate Area, Ordinance for Closure, Alley Description and Exhibit Plat

Summary & Background:

A request has been received from Habitat for Humanity of Owensboro, for consideration to close a section of alley right of way between 1701 Breckenridge Street and 1714 Hall Street, being 14 foot wide and described below:

The proposed section of alley right of way is described as beginning at a calculated point being the northeast corner of lot 4 of the Habitat for Humanity of Owensboro property, as recorded in deed book 1033, at page 749 in the Office of the Daviess County Clerk and being the northwest corner of the right-of-way of a 14-foot alley; thence with the north right-of-way line of said alley in a curve to the right being subtended by a chord of south 81 degrees 04 minutes 27 seconds east, a chord distance of 13.86 feet and having a radius of 10,562.17 feet, in all an arc distance of 13.86 feet to a calculated point being in said north right-of-way line; thence severing said right-of-way south 08 degrees 39 minutes 24 seconds west, a distance of 58.36 feet to a calculated point being in the west right-of-way line of said 14-foot alley and being in the east property line lot 1 of the Habitat for Humanity of Owensboro property, as recorded in deed book 1033, at page 749 in said clerk's office; thence with said east property line north 04 degrees 41 minutes 25 seconds west, passing through the southeast corner of lot 1 of the Habitat for Humanity of Owensboro property, as recorded in deed book 1033, at page 749 in said clerk's office and continuing on said course for a total distance of 60.15 feet to the point of beginning and containing 404 square feet or 0.009 acres.

Rita Jacobs, president of Habitat for Humanity of Owensboro, representative of the owner of property at 1701 Breckenridge Street and 1714 Hall Street. Habitat for Humanity is the only owner of property abutting the proposed alley right of way to be closed. They signed and submitted the Request for Closure Form, and the 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. An easement was requested and will be retained by Atmos Energy over the existing alley right of way to be closed. Habitat for

Humanity, will also be dedicating public right of way with a future plat for East 17th Street along with additional alley right of way to realign alley right of way.

Steve Lynn - DRAFTED THE ORDINANCE FOR CLOSURE

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 : south of E 17th Street (to be dedicated by a future plat), saif alley is +/-14-ft side and runs north/south as shown on Exhibit "A" 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.

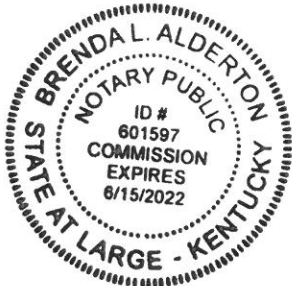
SIGNED BY: Rita Kamuf Jacobs
(PRINTED NAME) Rita Kamuf Jacobs, President, Habitat for Humanity
DATE: 10/7/2020
ADDRESS: 1702 Mosely St., Owensboro, KY 42303

STATE OF KENTUCKY)

COUNTY OF DAVIESS)

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

Rita Kamuf Jacobs, on this the 7th day of October, 2020.



Brenda L. Alderton
Notary Public, State of Kentucky at Large
My commission expires: 6-15-2022
Notary ID#: 601597

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

I (We), Rita Kamuf Jacobs, President, Habitat for Humanity,
do Solemnly swear and affirm that I am (we are), the fee simple owner (s) of real property located
at and known as 1701 Breckenridge St. E. RKJ
1714 Hall St. Owensboro, KY
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:

Alley right of way lying between 1701 Breckenridge St.
& 1714 Hall St. as shown on 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 15th Day of October, 2020

PROPERTY OWNER (S) :

Rita Kamuf Jacobs, President, Habitat for Humanity

STATE OF KENTUCKY)

COUNTY OF DAVIESS)

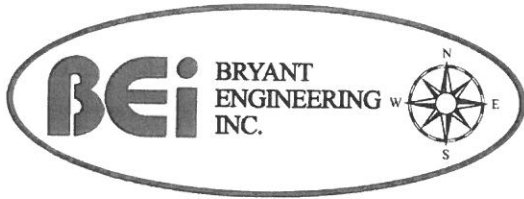
The foregoing instrument was signed and acknowledged before me by Rita Kamuf Jacobs, President, For & on behalf of Habitat for Humanity, Inc.
On this the 15th day of October, 2020.

Matt G. Galt

NOTARY PUBLIC, State at Large

My Commission expires: 7-27-2023

#626207



1535 Frederica Street
Owensboro, KY 42301
P.O. Box 21382
www.bryant-eng.com
Phone: (270) 685-2811
Fax: (270) 683-4991

PROPERTY DESCRIPTION
0.009 ACRES
ALLEY CLOSING

BEGINNING AT A CALCULATED POINT BEING THE NORTHEAST CORNER OF LOT 4 OF THE HABITAT FOR HUMANITY OF OWENSBORO PROPERTY, AS RECORDED IN DEED BOOK 1033, AT PAGE 749 IN THE OFFICE OF THE DAVIESS COUNTY CLERK AND BEING THE NORTHWEST CORNER OF THE RIGHT-OF-WAY OF A 14-FOOT ALLEY; THENCE WITH THE NORTH RIGHT-OF-WAY LINE OF SAID ALLEY IN A CURVE TO THE RIGHT BEING SUBTENDED BY A CHORD OF SOUTH 81 DEGREES 04 MINUTES 27 SECONDS EAST, A CHORD DISTANCE OF 13.86 FEET AND HAVING A RADIUS OF 10,562.17 FEET, IN ALL AN ARC DISTANCE OF 13.86 FEET TO A CALCULATED POINT BEING IN SAID NORTH RIGHT-OF-WAY LINE; THENCE SEVERING SAID RIGHT-OF-WAY SOUTH 08 DEGREES 39 MINUTES 24 SECONDS WEST, A DISTANCE OF 58.36 FEET TO A CALCULATED POINT BEING IN THE WEST RIGHT-OF-WAY LINE OF SAID 14-FOOT ALLEY AND BEING IN THE EAST PROPERTY LINE LOT 1 OF THE HABITAT FOR HUMANITY OF OWENSBORO PROPERTY, AS RECORDED IN DEED BOOK 1033, AT PAGE 749 IN SAID CLERK'S OFFICE; THENCE WITH SAID EAST PROPERTY LINE NORTH 04 DEGREES 41 MINUTES 25 SECONDS WEST, PASSING THROUGH THE SOUTHEAST CORNER OF LOT 1 OF THE HABITAT FOR HUMANITY OF OWENSBORO PROPERTY, AS RECORDED IN DEED BOOK 1033, AT PAGE 749 IN SAID CLERK'S OFFICE AND CONTINUING ON SAID COURSE FOR A TOTAL DISTANCE OF 60.15 FEET TO THE POINT OF BEGINNING AND CONTAINING 404 SQUARE FEET OR 0.009 ACRES.

