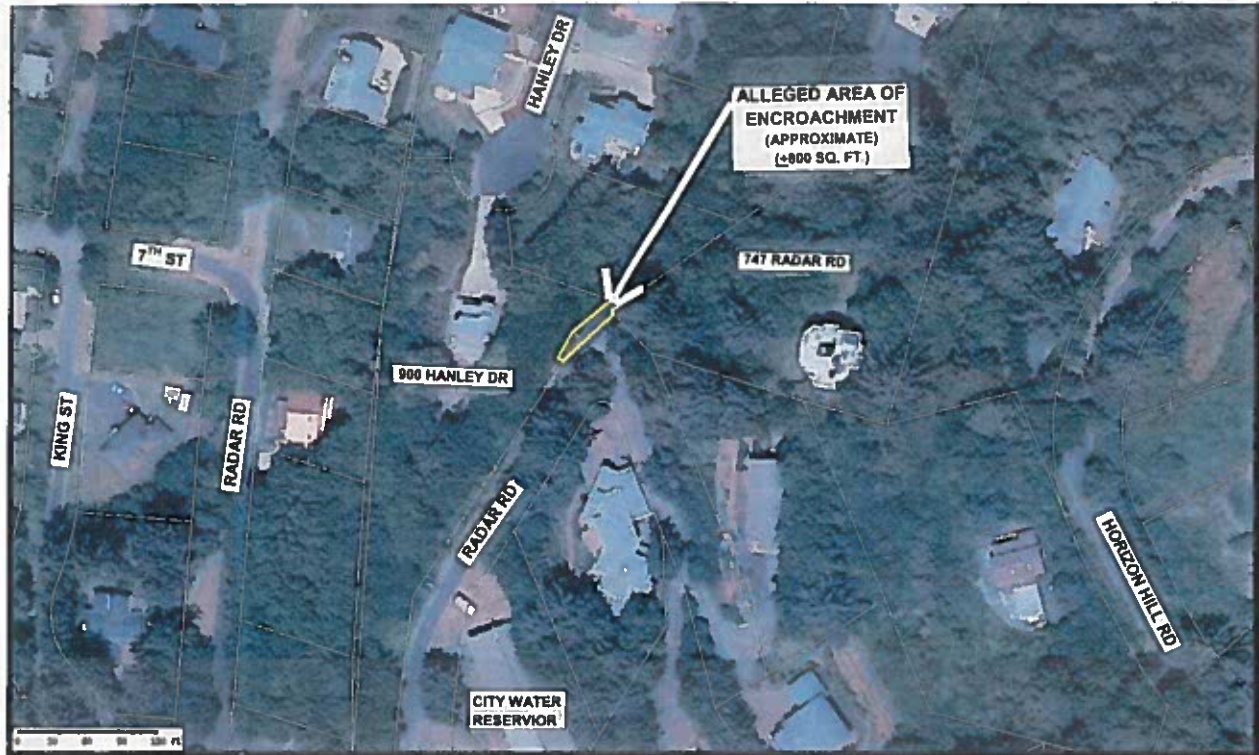


RADAR ROAD AND UTILITIES LOCATED ON PRIVATE PROPERTY

Background

Dennis Snyder, 747 Radar Road, has asked if the City can remedy the issue of Radar Road and associated utilities being located on private property. Previous surveys and aerial photography indicate that a portion of Radar Road and utilities are located on property at 900 Hanley Drive. Mr. Snyder has recently had communication with the 900 Hanley Drive property owner.



The Lincoln County Surveyor, John Waffenschmidt, described the process that the County uses to legalize road areas that are currently on private property. Lincoln County follows procedures described in Oregon Revised Statute (ORS) 271. Cities may follow similar procedures described in ORS 223.935 to 223.950.

Basis for Legalization of Road (ORS 223.935)

A city governing body may initiate proceedings to legalize a city road within the city if any of the following conditions exist:

1. If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a public road.
2. If the location of the road cannot be accurately determined due to:
 - a. Numerous alterations of the road;
 - b. A defective survey of the road or adjacent property; or
 - c. Loss or destruction of the original survey of the road.
3. If the road as traveled and used for 10 years or more does not conform to the location of a road described in the city records.

Item #3 above is applicable. It is apparent that Radar Road, as traveled and used for more than 10 years, does not conform to the location described as being within the public right-of-way.

Proceedings for Legalization of Roads (ORS 223.940)

1. The city governing body shall initiate proceedings for legalization of a road as follows:
 - a. Cause the road to be surveyed to determine the location of the road;
 - b. Cause the city engineer or other city road official to file a written report with the governing body including the required survey and any other information required by the city governing body; and
 - c. Cause notice of the proceedings for legalization to be provided to owners of abutting land in the manner required by city ordinance or charter.
2. Through this process, any person may file with the city governing body information that controverts any matter presented to the city governing body in the proceeding or alleging any new matter relevant to the proceeding.

At this time, the Yachats City Council should determine if they want to proceed with the legalization of Radar Road. If so, the initial step will be to hire a surveyor to determine the portion of the road and utilities that encroach onto the adjacent property.

Order Under Road Legalization Proceeding (ORS 223.950)

1. After considering matters presented in a proceeding to legalize a road under ORS 223.935 (Basis for legalization of road) to 223.950 (Order under road legalization proceeding), a city governing body shall determine whether legalization of the road is in the public interest and shall enter an order abandoning or completing the legalization procedures on the road.
2. When a city governing body legalizes a road under ORS 223.935 (Basis for legalization of road) to 223.950 (Order under road legalization proceeding), the city governing body shall cause the road to be surveyed and the centerline and right of way to be monumented by a registered professional land surveyor. The survey map and narrative for such survey shall be prepared and filed with the county surveyor in accordance with ORS 209.250 (Survey by registered land surveyor).
3. Courts shall receive any order filed under this section as conclusive proof that the road exists as described in the order.
4. Upon completion of the legalization procedures under ORS 223.935 to:
 - a. Any records showing the location of the road that conflict with the location of the road as described in the order are void; and
 - b. The road exists as shown on the order legalizing the road.

Compensation for Property Affected by Road Legalization (ORS 223.945)

ORS 223.945 states that a city governing body shall provide for compensation to any person who has established a structure on real property if the structure encroaches on a road that is the subject of legalization proceedings under ORS 223.935.

It is apparent that no structure has been established by the property owner on the portion of the road that encroaches on the private property.