



NOTICE OF PUBLIC MEETING
CITY OF ALBANY
CITY COUNCIL
 Council Chambers
 333 Broadalbin Street SW
 Wednesday, September 10, 2008
 Following ARA Agency Meeting

OUR MISSION IS

*"Providing quality public services
 for a better Albany community."*

OUR VISION IS

*"A vital and diversified community
 that promotes a high quality of life,
 great neighborhoods, balanced
 economic growth, and quality public
 services."*

AGENDA

Rules of Conduct for Public Hearing

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE TO THE FLAG
3. ROLL CALL
4. SCHEDULED BUSINESS

a. Communication

- 1) Accepting letter of resignation from Delia Guillen from the Human Relations Commission. [Page 1]

Action: _____

b. Public Hearing

- 1) Adopting a supplemental budget for the 2008-2009 fiscal year, authorizing the purchase of property on Lochner Road from Chad Curry, and authorizing the City Manager to execute an agreement for conveyance of real property. [Pages 2-13]

Action: _____ RES. NO. _____

c. Business from the Public

d. First Reading of Ordinance

- 1) Amending Chapter 3.50 of the Albany Municipal Code (MCI WorldCom Network Services, Inc., franchise) by renewing the current agreement until September 11, 2013, and declaring an emergency. [Pages 14-16]

Action: _____ ORD. NO. _____

e. Adoption of Resolutions

- 1) SP-12-08 and AD-01-08, calling up the SmartCentres Site Plan Review and Adjustment applications staff decision. [Pages 17-20]

Action: _____ RES. NO. _____

- 2) Providing for additional revenue and offsetting expenses in the Central Services Fund. [Pages 21-22]

Action: _____ RES. NO. _____

f. Adoption of Consent Calendar

1) Approval of Minutes

- a) August 13, 2008, City Council Meeting [Pages 23-30]

2) Accepting easements from:

- a) Carl Eckhold and Amber Eckhold. [Pages 31-34]
- b) Daniel K. Watson and Andrea M. Watson. [Pages 35-40]

RES. NO. _____

RES. NO. _____

3) Accepting a right-of-way dedication from Gloria Rose Pruitt. [Pages 41-46]

RES. NO. _____

4) Appointing City Manager Pro Tems. [Page 47]

RES. NO. _____

5) Approving a liquor license for Chasers Bar & Grill, LLC, 435 Second Avenue. [Page 48]

Action: _____

g. Report

1) SD-05-08, Thornton Lake Estates Subdivision LUBA remand. [Page 49]

Action: _____

5. BUSINESS FROM THE COUNCIL

6. NEXT MEETING DATE: Work Session Monday, September 22
Regular Session Wednesday, September 24

7. ADJOURNMENT

City of Albany Web site: www.cityofalbany.net

August 26, 2008

Delia Guillen
PO Box 846
Albany, Oregon 97321

Wes Hare
333 Broadalbin St. S.E.
Albany, Oregon 97321

Dear Mr. Hare,

Please accept this letter as my resignation from the Human Relations Commission.

I want you to know that I really appreciate having had the opportunity to serve my community. I also want to thank you and the members of the commission for working so hard to make of Albany a better community.

Sincerely,

CC: Jeffrey Evans



TO: Albany City Council
VIA: Wes Hare, City Manager
Stewart Taylor, Finance Director
Ed Hodney, Parks Director
FROM: *JS* John Stahl, Assistant Finance Director
DATE: September 3, 2008
SUBJECT: 2008-2009 Parks Fund Supplemental Budget

Action Requested:

Staff recommends the adoption of the resolution proposing a Fiscal Year 2008-2009 Parks Fund supplemental budget and the purchase of property on Lochner Road.

Budget Discussion:

The proposed supplemental budget changes total \$3,652,700 a 43% increase to the current FY 2008-2009 Parks Fund budget which will be used to adjust appropriations in the Parks SDC Projects program and the Parks Capital Improvement Program (CIP). Supplemental budget changes include an appropriation of \$1,300,000 in the Parks CIP program to purchase approximately 26.6 acres for the establishment of a youth sports complex. The beginning balance in the Parks SDC Projects program will be increased by \$2,352,700 with an appropriation of a \$1,300,000 transfer to Parks CIP programs and \$1,052,700 added to capital reserve.

Parks Discussion:

The 2006 Parks and Recreation Master Plan calls for a new community park to be established in south Albany. This park will provide a location for a youth sports complex to include soccer, football, and baseball fields, as well as other outdoor recreation facilities. The project has been included in the adopted Capital Improvements Program.

In May 2008, the City Council directed staff to proceed with negotiations to purchase property from Chad Curry for the new park in south Albany. An agreement for the purchase has been drafted for the Council's review and approval. In brief, the agreement calls for:

- the initial purchase of approximately 26.61 acres of property near the intersection of Lochner Road and Ellingson Road for \$46,875 per acre, or a total of \$1,247,344;
- the reservation of an option for the City to purchase an additional 5 acres within three years at a price of \$46,875 per acre;
- the obligation of Curry to secure Linn County's approval of a partition plat;
- the sharing of costs related to the construction of a residential street, designed to meet City development code requirements, which would serve both the park and any future development on the remainder of Curry's property;
- the dedication of the street to the City.

Budget Impact:

This project was originally budgeted in the FY 2007-08 Parks and Recreation Fund (Park SDC Program). However, the acquisition did not take place as expected and the funds were not spent. Both resources and expenditures need to be increased in the FY 2008-09 Budget to accommodate the project. These adjustments will be made in the Park SDC (202-35-1500) and the Parks Capital Improvements (202-35-1507) programs and are detailed in the proposed Resolution.

Attachments: Resolution and Agreement for Conveyance of Real Property

U:\Administrative Services\City Manager's Office\Resolution\Supplemental Budget 091008.doc

Community Park Site—Curry Tract



RESOLUTION NO. _____

A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET FOR THE 2008-2009 FISCAL YEAR; AUTHORIZING THE PURCHASE OF PROPERTY ON LOCHNER ROAD FROM CHAD CURRY; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR CONVEYANCE OF REAL PROPERTY.

WHEREAS, the Albany City Council adopted a budget for the City of Albany for the 2008-2009 fiscal year on June 25, 2008; and

WHEREAS, there has been an occurrence which was not ascertained at the time of the presentation of the budget for Fiscal Year 2008-2009 which requires a change in the City's financial planning; and

WHEREAS, there has occurred a pressing necessity which was not foreseen at the time of the preparation of the budget which requires prompt action; and

WHEREAS, Chad Curry owns certain real property in Linn County, Oregon, which is suitable for use as a new community park in south Albany; and

WHEREAS, the City of Albany has determined this property is integral to the 2006 Parks and Recreation Master Plan; and

WHEREAS, this property is needed for the establishment of a youth sports complex; and

WHEREAS, Chad Curry has agreed to sell approximately 26.61 acres of his property to the City of Albany for \$46,875 per acre, or approximately \$1,247,344 in total; and

WHEREAS, the City has agreed to pay the purchase price and to complete the terms specified in the agreement; and

WHEREAS, the supplemental budget will adjust a current fund by more than 10 percent of that fund's expenditures; and

WHEREAS, all public noticing and hearings have been provided.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the budget appropriation shown below is hereby approved for the 2008-2009 fiscal year:

<u>SPECIAL REVENUE FUNDS</u>	<u>Current Budget</u>	<u>Budget Adjustment</u>	<u>Revised Budget</u>
<u>PARKS & RECREATION</u>			
Sports Services	\$ 210,600		\$ 210,600
Children/Youth/Family Recreation Services	258,900		258,900
Resource Development/Marketing Services	261,300		261,300
Adult Rec & Fitness Services	187,100		187,100
Park Maintenance Services	1,372,700		1,372,700
Parks & Recreation Administration	1,397,800		1,397,800

Senior Services	460,900		460,900
Aquatic Services	678,400		678,400
NW Art & Air Festival	172,600		172,600
Performance Series	190,700		190,700
Urban Forestry	326,800		326,800
Park SDC Projects	1,667,300	2,352,700	4,020,000
Senior Center Foundation	16,300		16,300
Parks Capital Improvement Program	1,292,000	1,300,000	2,592,200
Total PARKS & RECREATION	\$8,493,400	\$3,652,700	\$12,146,100

BE IT FURTHER RESOLVED that the Albany City Council hereby authorizes the purchase of title to the real property identified as the Curry Property and authorizes the City Manager to execute an agreement for conveyance of real property.

DATED AND EFFECTIVE THIS 10TH DAY OF SEPTEMBER, 2008.

Mayor

ATTEST:

City Clerk

AGREEMENT FOR CONVEYANCE OF REAL PROPERTY

This Agreement is made and entered into this ____ day of _____, 2008, by and between the **CITY OF ALBANY, OREGON, a municipal corporation**, (hereinafter "Albany") and **CHAD CURRY** (hereinafter "Curry").

WHEREAS, Curry owns a parcels of land containing approximately ___ acres, more or less, outside of Albany's corporate boundary but within Albany's urban growth boundary; and

WHEREAS, Albany desires to purchase a portion of Curry's above described property for public park purposes; and

WHEREAS, both parties desire to agree upon the terms and circumstances pursuant to which the costs of the developing infrastructure will be paid to serve their respective properties after a purchase by Albany and intend, and by this Agreement, define their rights and obligations with regard to each other with respect to the matters hereafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

Section 1. Purchase of Property.

1.1 **Curry's Obligation to Partition.** Albany's obligations under this Agreement are contingent upon Curry applying for and obtaining permission from Linn County, Oregon, to partition the property described in Exhibit "1," attached hereto and by this reference incorporated herein, into two parcels. The partition shall result in the creation of two lawful parcels one of which shall consist of approximately 26.61 acres of land and shall be known, for purposes of this Agreement, as "Parcel 2" and the balance of the original parcel shall hereafter be known as "Parcel 1." A map showing the size, location, and configuration of the two parcels, upon completion of the required partitioning is attached hereto as Exhibit "2," and by this reference incorporated herein.

1.2 Upon partitioning as described above, Albany agrees to purchase and Curry agrees to sell "Parcel 2," described in Exhibit "2" for the purchase price of \$46,875 per acre. Curry shall have the parcel surveyed and that survey shall determine the exact acreage. The product of \$46,875 times the surveyed acreage shall be the purchase price.

1.3 **Other terms.** This purchase shall be subject to the following additional terms:

Deed. On the Closing Date, Curry shall execute and deliver to Albany a statutory warranty deed, conveying the Property to Albany, free and clear of all liens and encumbrances except the Permitted Exceptions.

Preliminary Title Report. Within ten (10) days after full execution of this Agreement, Curry shall furnish to Albany a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Albany will have ten (10) days from receipt of the Title Report to review the Title Report and to notify Curry, in writing, of Albany's disapproval of any exceptions shown in the Title Report. Those exceptions not objected to by Albany are referred to below as the "Permitted Exceptions." Zoning ordinances, building restrictions, taxes due and payable for the current tax year, and reservations in federal patents and state deeds shall be deemed Permitted Exceptions. If Albany notifies Curry of disapproval of any exceptions, Curry shall have 15 days after receiving the disapproval notice to either remove the exceptions or provide Albany with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes. If Curry does not remove the exceptions or provide Albany with such assurances, Albany may terminate this Agreement by written notice to Curry given within 15 days after expiration of such 15-day period, and this Agreement shall be null and void. It is the intent of the parties to close this transaction within 15 days of Albany's receipt of the preliminary title report.

Title Insurance. Within fifteen (15) days after closing, Curry shall furnish to Albany with an ALTA owner's policy of title insurance in the amount of the Purchase Price, standard form, insuring Albany as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

Taxes; Prorates. Real property taxes for the current tax year, insurance premiums (if Albany assumes the existing policy) and other usual items shall be prorated as of the Closing Date.

Possession. Albany shall be entitled to possession immediately upon closing.

Closing. Closing shall take place on or before the 5th day following the issuance of the commitment to issue the owners policy set forth above. Closing shall occur at the offices of First American Title Company; 2405 14th Ave., SE, Suite B; Albany. Curry shall pay all taxes and title insurance fees. Each party shall pay one-half of the escrow fees.

Earnest money. Curry hereby acknowledges receipt of the sum of \$_____ (2% of the estimated purchase price) paid by Albany as earnest money. The earnest money shall be applied to the purchase price on the closing date.

Purchase price. The purchase price shall be paid as follows:

At closing, the earnest money shall be credited to the purchase price.

At closing, Albany shall pay the balance of the purchase price in cash.

Curry's Representations. Curry represents and warrants to Albany as follows:

- i. Curry has received no written notice of any liens to be assessed against the Property.
- ii. Curry has received no written notice from any governmental agency of any violation of any statute, law, ordinance or deed restriction, rule or regulation with respect to the Property.
- iii. As far as Curry is aware, the Property has never been used for the storage or disposal of any hazardous material or waste. There are no environmentally hazardous materials or wastes continued on or under the Property and the Property has not been identified by any governmental agency as a site upon which environmentally hazardous materials or wastes have been or may have been located or deposited.

Section 2. Grant of Option. Curry grants Albany an exclusive option to purchase approximately 5 acres of "Parcel 1," which is depicted in Exhibit "2," as Parcel 1 the sale shall be upon the same terms, and for the same consideration as the City's purchase of property in Section 1 above. Curry further grants and assigns to Albany the right to apply for and consent to annexation of the property in question into the corporate limits of Albany. In the event City exercises this option and Curry applies for and receives approval for the annexation of the

property described in this Section to the corporate limits of Albany, Albany will reimburse Curry for one-half of the annexation and election fees. This option shall terminate three (3) years following execution of this Agreement. The City may exercise this option upon 30 days written notice to Curry. Closing shall occur on or before the 30th day following exercise of the option.

Section 3. Dedication and Construction of Residential Street. Upon annexation of the land described in Section 2 above to the corporate limits of the City of Albany, Curry agrees to dedicate to Albany a public right-of-way, as depicted in Exhibit "3," attached hereto and by this reference incorporated herein. This dedication shall be without cost to Albany and shall conform with the City's requirements for residential streets. Upon dedication and acceptance of the right-of-way by Albany, each party shall share equally in the actual cost of constructing the residential street at the approximate location shown on Exhibit "3". Curry may, but is not obligated, to construct the street and shall have the option of constructing the street, to City standards utilizing the SI (site improvement) permit process prior to his dedication of the land to City or, by filing a Petition for Improvement and waiver of remonstrance, authorizing the street to be constructed and further authorizing his adjoining property to be assessed one-half of the cost therefore. Albany's one-half cost of the street shall be paid in accordance with whichever method was chosen by Curry.

Section 4. Binding Effect/Assignment Restricted. This Agreement is binding upon all parties and shall inure to the benefit of Curry, Albany, and their respective heirs, legal representatives, successors and assigns.

Section 5. Attorney Fees. In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

Section 6. Notices. All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by certified or registered mail, return receipt requested, to the appropriate party as the address first set forth above. Any notices so transmitted shall be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

To Albany: City of Albany
333 Broadalbin Street
P.O. Box 490
Albany, OR 97321

To Buyer: Chad Curry

Section 7. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

Section 8. Applicable Law. This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon.

Section 9. Disclaimer. The property described in this instrument may not be within a Fire Protection District Protecting Structures. The property is subject to land use laws and regulations which, in farm or forest zones, may not authorize construction or siting of a residence *AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES*. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and existence of fire protection for structures.

Section 10. Representation. This Agreement is the subject of a negotiated transaction wherein both sides have had input into the terms hereof. As a consequence, the customary rule of contractual construction which resolves ambiguities against the drafter shall not apply. Albany has been represented in this transaction by the law firm of Long, Delapoer, Healy, McCann & Noonan, P.C., Attorneys at Law. Curry has been represented in this transaction by the law firm of Heilig, Misfeldt, & Armstrong, LLP. Each party acknowledges that they have relied strictly on the advice and representations provided to them by their respective attorneys.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the date and year first above written.

CITY OF ALBANY, OREGON

By _____
Title:

CHAD CURRY

By _____

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY.

SEC. 29 T. 11S. R. 03W. W.M.
LINN COUNTY, OREGON

11 3W 29
ALBANY

1" = 400'

400
47.58A

300
105.64A

EXTERIOR COR. DLC 69
ROBERT PENTLAND

INTERIOR COR. DLC 69
ROBERT PENTLAND

401
48.34A

8-50

11S-3W-29-401

SEE MAP 11 3W 20

1/4 COR. & SW COR. DLC 55
JORDAN S. ROBINSON

200
15.58A

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21.83A

102
4.85A

108
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C.E. 18836

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11S-3W-29-401

CO RD NO - 350

ELLINGSON RD

PARCEL 1

PARCEL 2

301
73.32A

C.E. 24373

NO. 2005 - 59

C.E. 23801

NO. 2004 - 54

8-51

NO. 2004 - 54

SW COR. DLC 69
ROBERT PENTLAND

PARCEL 1

PARCEL 2

SE COR. DLC 69
ROBERT PENTLAND

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2007-128 TRACTS

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PARCEL 2

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FOUND MONUMENT LIST

- 33 WSW COR. ROBERT PENTLAND D.L.C. No. 69
FD. 3 1/4" ALUM CAP (C) THAT IS 0.25' BELOW A.C. SURFACE.
HELD TO ESTABLISH CENTERLINE.
- 34 FD. 5/8" I.R. (A) W/TPC STAMPED "BARKER PLS 636" THAT IS
0.25' BELOW GROUND SURFACE; ON R-O-W LINE HELD FOR NW CORNER.
- 35 FD. 3" BRASS CAP (C) THAT IS FLUSH W/ A.C. SURFACE.
HELD TO ESTABLISH CENTERLINE.
- 36 FD. 5/8" I.R. (E) W/TPC THAT IS 1.8' BELOW GROUND.
- 37 FD. 5/8" I.R. (D) W/TPC STAMPED "WRG DESIGN INC".
ON R-O-W LINE HELD FOR SE CORNER.
- 38 FD. 5/8" I.R. (A) W/TPC STAMPED "BARKER PLS 636" THAT IS
FLUSH W/ GROUND SURFACE. IN EAST-WEST FENCE LINE.
HELD TO ESTABLISH NORTH LINE.
- 39 FD. 5/8" I.R. (A) W/TPC STAMPED "BARKER PLS 636" THAT IS
FLUSH W/ GROUND SURFACE. 0.7' EAST OF NORTH-SOUTH
FENCE LINE. HELD TO ESTABLISH EAST LINE.
- 40 FD. 5/8" I.R. (F) THAT IS 0.2' BELOW GROUND SURFACE.
ON LINE.

LEGEND

- FOUND MONUMENT, AS NOTED; SEE "FOUND MONUMENT LIST"
- ⊖ CALCULATED POINT PER RECORD DATA
- SET 5/8" X 30" ROD W/TPC MARKED "TRD ENGR. LS 58561"
- () RECORD DATA, SEE "RECORD REFERENCE LIST"
- FD. FOUND
- I.R. IRON ROD
- Y.P.C. YELLOW PLASTIC CAP
- ALUM ALUMINUM
- COR. CORNER
- C.R. COUNTY ROAD
- C.S. COUNTY SURVEY
- D.L.C. DONATION LAND CLAIM
- W.G. WITNESS CORNER
- R-O-W RIGHT-OF-WAY
- AC ASPHALT CONCRETE
- ⊖ FOUND MONUMENT REFERENCE; SEE "FOUND MONUMENT LIST"
- (A) RECORD SURVEY REFERENCE; SEE "RECORD REFERENCE LIST"
- (100) CALCULATED POINT BASED ON RECORD DATA

RECORD REFERENCE LIST

- (A) C.S. 21645
- (B) LINN COUNTY CORNER RESTORATION BOOK 5, PAGE 15; LINN COUNTY GPS 43050
- (C) LINN COUNTY GPS 43270 RESET 2004
- (D) C.S. 24375
- (E) C.S. 23591
- (F) ROAD RECORD VOL. 10, PG. 159

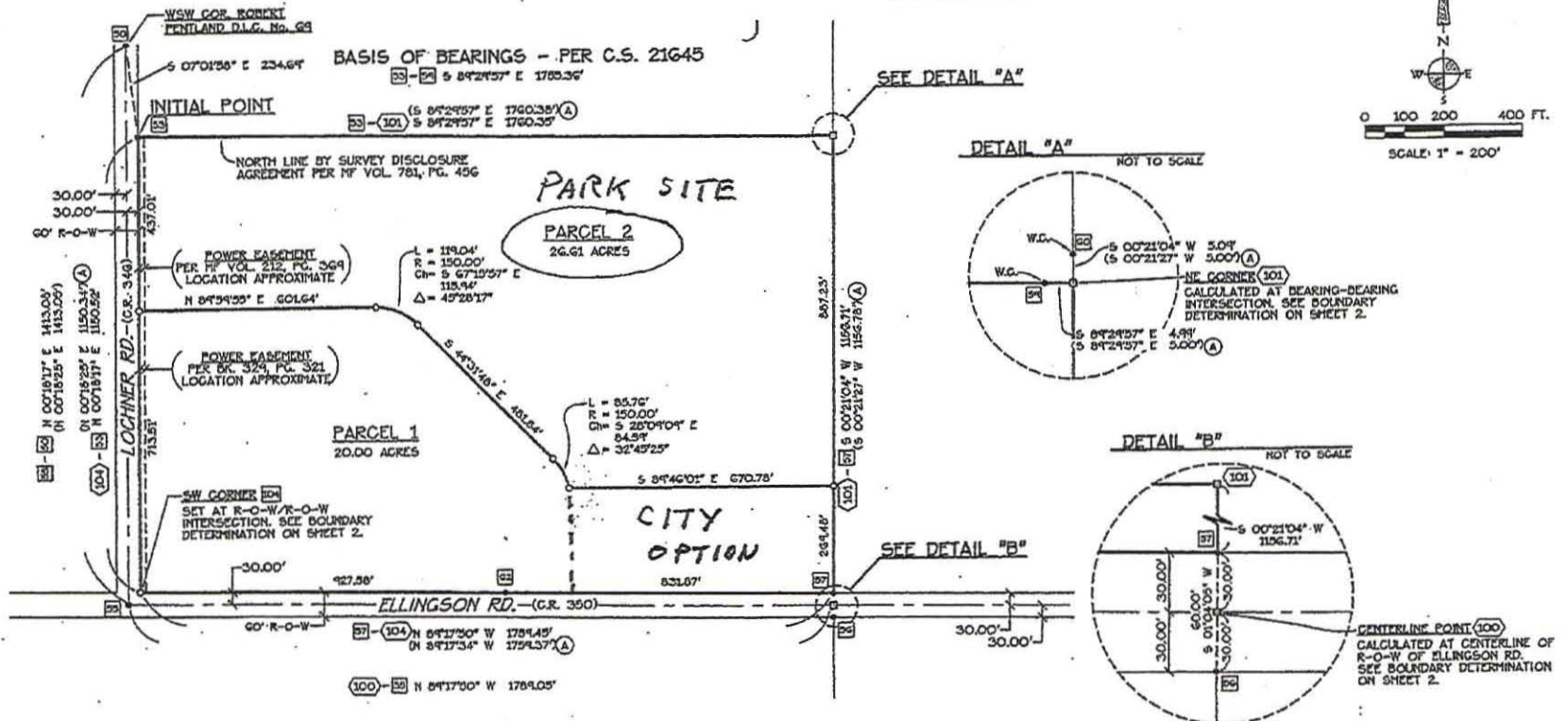
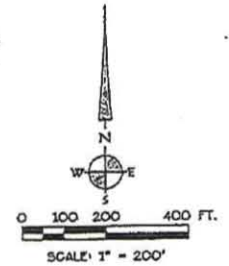
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 FOR
CHAD CURRY
 LOCATED IN
 THE ROBERT PENTLAND D.L.C. No. 69
 NW 1/4 SEC. 29, T. 11 S., R. 3 W., W.M.
 NE 1/4 SEC. 30, T. 11 S., R. 3 W., W.M.
 LINN COUNTY, OREGON
 JULY 9, 2008
 LINN COUNTY CASE No. PD08-0136

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 JULY 9, 2002
 JOE J. COTA
 #2086115
 Renewal: 12/31/09

I HEREBY CERTIFY THIS TO BE A TRUE
 AND EXACT COPY OF THE ORIGINAL PLAT.

JOE J. COTA P.L.S. 585961



Date: 7/9/2008 Time: 5:14
 Scale: 1"=200'
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K & D K & D ENGINEERING, Inc.
 276 N.W. Holmby Street, P.O. Box 728
 Albany, Oregon 97321
 (541) 928-2005

ON R-O-W LINE; HELD FOR SE CORNER.

- 59 FD. 5/8" I.R. (A) W/YPC STAMPED "BARKER PLS G36" THAT IS FLUSH W/ GROUND SURFACE. IN EAST-WEST FENCE LINE. HELD TO ESTABLISH NORTH LINE.
- 60 FD. 5/8" I.R. (A) W/YPC STAMPED "BARKER PLS G36" THAT IS FLUSH W/ GROUND SURFACE. 0.7' EAST OF NORTH-SOUTH FENCE LINE. HELD TO ESTABLISH EAST LINE.
- 62 FD. 5/8" I.R. (F) THAT IS 0.2' BELOW GROUND SURFACE. ON-LINE.

- D.L.C. DONATION LAND CLAIM
- W.C. WITNESS CORNER
- R-O-W RIGHT-OF-WAY
- A.C. ASPHALT CONCRETE
- 50 FOUND MONUMENT REFERENCE; SEE "FOUND MONUMENT LIST"
- (A) RECORD SURVEY REFERENCE; SEE "RECORD REFERENCE LIST"
- 100 CALCULATED POINT BASED ON RECORD DATA

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 9, 2002
JOE J. COTA
#58561LS

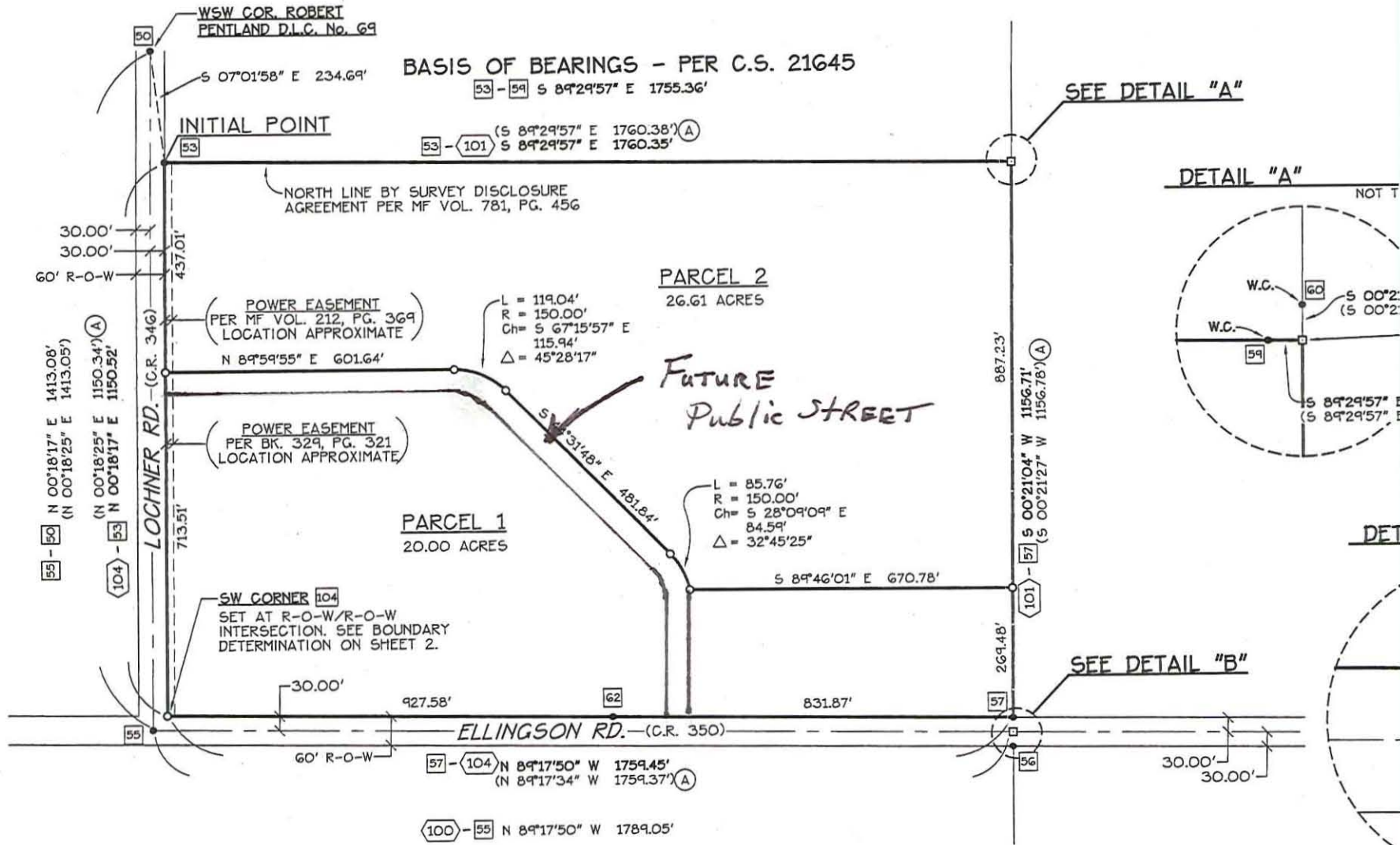
Renewal: 12/31/09

I HEREBY CE
AND EXACT

JOE J. COTA

EXHIBIT 3

1
NORTH





TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Stewart Taylor, Finance Director
Mike Murzynsky, Senior Accountant *mm*
DATE: September 3, 2008, for the September 13, 2008, City Council Meeting
SUBJECT: Franchise extension and revisions to existing Ordinance 3.5

Action Requested:

Council approval of a franchise renewal with MCI Worldcom Network Services, Inc. as cited under Ordinance 3.50.

Discussion:

The MCI Worldcom Network Services, Inc. franchise agreement is scheduled to expire on September 11, 2008. Staff recommends that City Council renew the current agreement, as cited under Albany Municipal Code 3.50.170. to September 11, 2013.

The revisions to the existing Ordinance relate to 1) the date of termination, 2) correction of grammar, 3) naming the Finance Director as recipient of the yearly fee, and 4) requiring MCI to pay an administrative fee.

If you have questions, please call Stewart Taylor at 917-7521.

Budget Impact:

No change from the current budget.

ST:mm
Attachment

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 3.50 OF THE ALBANY MUNICIPAL CODE (MCI WORLDCOM NETWORK SERVICES, INC., FRANCHISE) BY RENEWING THE CURRENT AGREEMENT UNTIL SEPTEMBER 11, 2013; AND DECLARING AN EMERGENCY.

WHEREAS, the franchise fee agreement with MCI WorldCom Network Services, Inc., will expire as of September 11, 2008;

WHEREAS, MCI WorldCom Network Services, Inc. is requesting a new franchise agreement, and

WHEREAS, MCI WorldCom Network Services, Inc. has been renamed to MCI Communications Services, Inc., successor in interest to MCI WorldCom Network Services, Inc.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO HEREBY ORDAIN AS FOLLOWS:

Chapter 3.50 is amended to read:

Chapter 3.50

~~MCI WORLDCOM NETWORK~~ COMMUNICATIONS SERVICES, INC.

Section 1:

3.50.020 Excavation and construction

...All transmission and distribution structures, lines, and equipment erected by the Franchisee within the City shall be so located as to **not** cause ~~minimum~~ interference with the proper use of streets, bridges, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, bridges, or other public ways or places.

3.50.080 Improvements – Utility obstruction prohibited

... Nothing in this chapter shall be construed in any way to prevent the proper authorities of the City from sewerage (sanitary and storm), providing water service, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City in or upon which the poles, wires or other conductors of Franchisee shall be placed. All such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus. **The moving of the Franchisee's** ~~company~~ facilities, where required due to such work by the City, will be done by Franchisee without cost to the City.

3.50.130 Payment

Effective September 11, ~~2000~~ 2008, and until the franchise's expiration, said Franchisee shall pay to the City, annually, \$2.00 per linear foot of conduit and/or cable owned and maintained by Franchisee. This franchise fee shall be deposited in the U.S. mail, postage prepaid, addressed to the ~~Administrative Services~~

~~Director of the City Finance Director~~ and postmarked on or before the last business day of September. If a payment is not mailed by the date set forth above, the payment shall be deemed delinquent and shall accrue interest at the rate of nine percent per annum from the date of the applicable reporting period. The franchise payments made by Franchisee will be accepted by the City from the Franchisee, in payment of any separate fees that are imposed by the City on Franchisee for street openings, construction or inspection, or maintenance of fixtures or facilities. However, Franchisee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions, or permit conditions from the franchise fee required by this chapter. Franchisee shall also pay to the City as additional consideration under this franchise an administrative fee totaling \$2,000, ~~due on the effective date of this franchise, which may be deducted from Franchisee's payment set forth herein.~~

3.50.170 Continuation – Termination

The rights, privileges, and franchise herein granted shall continue and be in force until ~~September 11, 2005~~, **September 11, 2013**, except that it is understood and agreed that either party may at any time terminate or renegotiate this agreement upon six months' notice in writing.

Section 2: Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the City of Albany, an emergency is hereby declared to exist. This ordinance will be in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk



TO: Albany City Council
VIA: Greg Byrne, Community Development Director *JB*
Wes Hare, City Manager
FROM: Don Donovan, Planning Manager *DD*
DATE: September 3, 2008, for the September 10, 2008, City Council Meeting
SUBJECT: Files SP-12-08 and AD-01-08, SmartCentres Retail Center Applications

Action Requested:

Call up the staff decision on the applications referenced above. A Resolution for the City Council to call up the staff decision is attached to this memo.

Discussion:

Background: In March 2008, Oregon Acquisition One LLC submitted a Site Plan Review application and an Adjustment application to the City's Planning Division. The applications are to build a shopping center on the south side of Santiam Highway, west of Goldfish Farm Road. The site plan shows six buildings and 1,100 parking spaces. One of the buildings is 187,000 square feet. Oregon Acquisition One LLC representatives tell us that tenants for the buildings have not been chosen yet.

The shopping center would be built on about 25 acres of property. In 2006, the City Council approved applications to change the Comprehensive Plan Map and Zoning Map designations of about 12 acres of the property from residential to regional commercial. All of the 25 acres are now designated for commercial development.

The decision whether to approve a Site Plan Review application for commercial development on property that is designated for commercial development is made by the Planning staff. Where a proposed commercial development abuts residential land, the staff decision can be appealed to the Planning Commission. The Planning Commission decision can be appealed to the state Land Use Board of Appeals. With the Oregon Acquisition One LLC applications, however, since the City Council made the decision to change the zoning of part of the property to allow commercial development, it made sense to have the Council review the staff decision if it was to be reviewed.

Resolution 5477: At the September 12, 2007, City Council meeting, the Council passed Resolution 5477, which says the Council will "call up" the staff decision on the Oregon One Acquisitions LLC Site Plan Review application. The Resolution and a memo from then Community Development Director Helen Burns Sharp that went to the City Council are attached to this memo as background information.

Action: On September 9, 2008, the Planning staff made a decision to approve with conditions the Site Plan Review and Adjustment applications. This memo requests that the City Council now call up the staff decision. A public hearing on the applications will then be scheduled, most likely for the October 8, 2008, City Council meeting. The hearing will be a "new" (de novo) hearing with the opportunity for new applicant and public comments.

Budget Impact:

None.

Attachments: New Resolution; Old Resolution; September 5, 2007, Helen Burns Sharp Memo

RESOLUTION NO. _____

A RESOLUTION CALLING UP THE SMARTCENTRES SITE PLAN REVIEW AND ADJUSTMENT APPLICATIONS STAFF DECISION

WHEREAS, Albany Development Code Section 1.520(4) provides that the City Council may, within the appeal period, acting upon the recommended action of the City Manager or upon its own motion, order a de novo review of any lower level decision. Such review shall be conducted in accordance with appeal procedures as specified in the Code; and

WHEREAS, on September 12, 2007, the City Council passed a resolution that says the Council will call up the staff decision on the SmartCentres Site Plan Review application; and

WHEREAS, on September 9, 2008, the Planning Division staff made a decision to approve the SmartCentres Site Plan Review and Adjustment applications; and

WHEREAS, September 10, 2008 is within the 10-day appeal period for the staff decision specified in Albany Development Code 1.330(5)(b); and

NOW, THEREFORE, BE IT RESOLVED that the City Council calls up the staff decision on the SmartCentres Site Plan Review and Adjustment applications and orders a *de novo* review by the Council; and

BE IT FURTHER RESOLVED that the City Council review will be scheduled for the October 8, 2008 City Council meeting.

DATED AND EFFECTIVE THIS 10th DAY OF September 2008.

ATTEST:

Mayor

City Clerk

RESOLUTION NO. 5477

A RESOLUTION ESTABLISHING THE PROCESS FOR REVIEWING THE SMARTCENTRES SITE PLAN APPLICATION.

WHEREAS, SmartCentres has indicated that they will submit a Site Plan application for property they own on the south side of Santiam Highway west of Goldfish Farm Road; and

WHEREAS, Planning staff is typically the local decision-maker for site plan review applications and local appeals would normally end with the Planning Commission and further appeals would go directly to LUBA without City Council involvement; and

WHEREAS, the Albany Development Code in Section 1.520(4) provides a mechanism whereby the City Council may, during the appeal period, call up a lower level decision for a de novo review; and

WHEREAS, the City Council recently amended the Comprehensive Plan and Zoning Maps affecting this property, and imposed a trip cap on future development; and

WHEREAS, it is appropriate that the City Council be the final local decision maker in this case, given its past involvement in mapping changes and imposition of a trip cap.

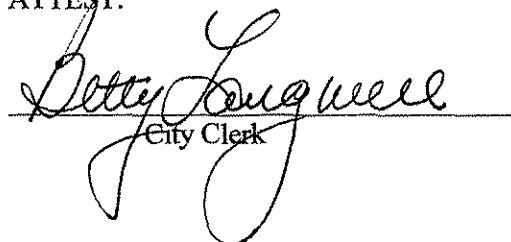
NOW, THEREFORE, BE IT RESOLVED by the Albany City Council, the following:

1. Staff will make the initial decision when SmartCentres submits a Site Plan application.
2. After staff makes the initial decision, the City Council will, during the appeal period, call up the decision by ordering a de novo review of the staff decision.

DATED AND EFFECTIVE THIS 12TH DAY OF SEPTEMBER 2007.


Mayor

ATTEST:


City Clerk



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Helen Burns Sharp, Community Development Director HBS
DATE: September 5, 2007, for the September 12, 2007, City Council Meeting
SUBJECT: Site Plan Review Procedure for SmartCentres Application ("Ropp" Property)

Action Requested:

Passage of the attached resolution that authorizes staff to make the initial decision on the SmartCentres Site Plan application and Council to call up that decision to make a final decision.

Discussion:

In early September we have a pre-application meeting scheduled with SmartCentres, which is the company that now owns what we have referred to as the "Ropp" property and an adjoining piece of land formerly owned by Coastal Farm. Their property is located east of I-5, west of Goldfish Farm Road, and is on the south side of Santiam Highway. The zoning is Regional Commercial (RC).

We need direction from Council on what process you wish us to follow in reviewing this Site Plan application once it is submitted. Staff's recommendation is that you direct staff to make the initial decision and that you then call up the staff decision for a final decision. ADC 1.520(4) provides that, during the appeal period, the City Council, acting upon the recommended action of the City Manager or upon its own motion, may order a de novo review of any lower level decision.

Due to the 120-day deadline for processing local land use applications, it would be difficult to process the anticipated appeal of any staff decision through both the Planning Commission and City Council. The requested action ensures that the City Council can weigh in on this important development review without the time pressures which would otherwise be imposed.

The Council spent considerable time in 2006 on this property when rezoning the remainder of it RC. You imposed a trip cap that would apply to the entire development site. Staff believes that Council might want to make the final local decision on the Site Plan. Passage of this resolution enables you to do that.

HBS

Attachment: Resolution

c: Don Donovan, Planning Manager
Jim Delapoer, City Attorney

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TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Bob Woods, Management Systems Director *BW*
DATE: September 3, 2008, for the September 10, 2008, City Council Meeting
SUBJECT: Additional Revenue and Appropriation Authority
RELATES TO STRATEGIC PLAN THEME: • An Effective Government

Action Requested:

Approve the attached resolution to increase estimated revenues and increase appropriations for offsetting expenses.

Discussion:

As part of our budgeted training funds for FY 2009, members of City staff will be attending training to increase our skills in performance improvement efforts. In scheduling this training, we invited neighboring jurisdictions to join us. By increasing the number of students, the cost per student decreases, thus benefiting both Albany and the others that attend.

Interest in this opportunity has been received from the City of Salem, the City of Corvallis, and Linn-Benton Community College. As many as 12 additional students may be attending.

Albany costs are already budgeted, and no action on that is required. The attached resolution provides for the receipt of additional funding from these outside agencies that was not contained in the original budget. It also provides for the offsetting expense that will occur from these attendees.

Our approach has been to split the actual costs involved amongst the governmental agencies that attend. The amounts are estimates, and the actual revenues and expenses will balance and will likely be less than the amount shown.

Budget Impact:

No net impact. Actual revenues and expenses will be offset.

BW:de
Attachment

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RESOLUTION NO. _____

A RESOLUTION PROVIDING FOR ADDITIONAL REVENUE AND OFFSETTING EXPENSES IN THE CENTRAL SERVICES FUND.

WHEREAS, the City of Albany is sponsoring training and has invited other agencies to attend and share costs; and

WHEREAS, the adopted budget provides for Albany expenses but did not include anticipated revenue and expenses resulting from outside agency participation:

NOW, THEREFORE, BE IT RESOLVED that the anticipated revenues in the Central Services Fund are increased as shown, and offsetting additional appropriations are authorized in the City Manager's Office as a result of this additional participation.

REVENUE:

Central Services Resources/Revenue		
701-10-1004-47012	Miscellaneous Revenue	\$18,000

EXPENSE:

City Manager's Office		
701-11-1028-60101	Contractual Services	\$18,000

DATED AND EFFECTIVE THIS 10TH DAY OF SEPTEMBER 2008.

ATTEST:

Mayor

City Clerk

CITY OF ALBANY
 CITY COUNCIL
 Council Chambers
 Wednesday, August 13, 2008
 7:15 p.m.

MINUTES

CALL TO ORDER

Mayor Bedore called the meeting to order at 7:19 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Bedore led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Sharon Konopa, Ralph Reid, Jr., Floyd Collins, Dick Olsen, Bessie Johnson, Jeff Christman

SCHEDULED BUSINESS

Communication

Accepting resignation from Anna Anderson from the Human Relations Commission.

MOTION: Councilor Johnson moved to accept the resignation of Anna Anderson from the Human Relations Commission and send a thank you letter for her service. Councilor Collins seconded the motion and it passed 6-0.

Public Hearings

AN-01-08, proposing the annexation of properties located south of Knox Butte Road and forwarding the question of annexation to the voters on the November 4, 2008, ballot.

Bedore said this is a quasi-judicial public hearing regarding an application to annex approximately 30.15 acres south of Knox Butte Road and west of Scrael Hill Road. The applicants are Sid and Cindy Miles.

Bedore opened the public hearing and asked if any member of the City Council wished to abstain. No one did. He asked if any members of the City Council wished to declare a conflict of interest, or report any significant ex parte contact or a site visit. Bedore said he did a site visit. No one else did.

Bedore explained that for all those wishing to testify, be aware that you must raise an issue with enough detail to afford the Council and parties an opportunity to respond to the issue if you later want to raise that issue on appeal to the Land Use Board of Appeals (LUBA). Testimony and evidence must be directed towards the approval standards staff will describe or other criteria in the plan or Development Code which you believe apply to the decision. If additional documents or evidence are provided by any party, the City Council may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record request by the applicant shall result in a corresponding extension to the 120-day limit. Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with enough detail to allow the local government or its designee to respond to the issue precludes an action for damages in Circuit Court.

Staff Report

Infrastructure Analyst Mike Leopard said this application is a request to annex approximately 28 acres on the south side of Knox Butte Road west, of Scrael Hill Road. There is a conflict between the surveyed property line and an existing house on the adjacent property near the northeast corner of the site. The applicants are working with this neighbor to do a property line adjustment to resolve this issue. But, because of the timing constraints of the annexation election, they were unable to complete the adjustment before needing to proceed with the annexation application. The applicants feel that a similar issue could arise with the remainder of the eastern property boundary. Because the fence line near the eastern boundary doesn't coincide with the property line, there may be other claims regarding that area. Therefore, they have opted to remove the eastern 110 feet from the annexation request.

Leopard said there are four criteria for annexation. The first is that the property is eligible to be annexed because it is within the Urban Growth Boundary (UGB) and is contiguous to the existing City limits. The second requires that public facilities are available or can be made available in a timely manner. No public utilities currently exist adjacent to the subject property. The nearest water main is approximately 3,200 feet west in Knox Butte Road. Sewer is about 400 feet west of the site at Knox Butte Road and Marilyn Street. Storm drainage improvements consist mainly of roadside ditches along Knox Butte Road. The subject property currently has access to Knox Butte Road. San Felicia Avenue is a local unimproved street under

the jurisdiction of Linn County. The City uses an Annexation Agreement to insure that all needed public infrastructure improvements will be made by the developer before development can occur on the site. The agreement is a method of assuring that the necessary improvements are made in "a timely manner". The third criterion requires that sufficient planning and engineering studies have been completed so there are no significant unresolved issues. Such studies include: infrastructure facility plans, Comprehensive Plan work, buildable lands inventories, etc. All of the City's Facility Plans include the entire UGB in their study areas. A local wetland inventory shows considerable wetlands on the property. Recent Comprehensive Plan updates did not result in any changes to the Urban Residential Reserve designation for this area. The most recent Buildable Lands Inventory indicates that there is a surplus of single-family zoned land in the City. The applicant has chosen not to apply for a City zoning designation at this time. The property owner will apply for a City zone in the future when a specific development proposal is determined for the property. Until then, the land will retain its current UGM-20 zone. The final criterion is "reasonableness". This gives the City Council the ability to consider any other factors they believe may help determine if this annexation request is reasonable at this time.

Leopard explained that general elections are in May and November of even numbered years. There are no additional costs to the applicant by putting the annexation on the ballot at these elections. However, elections that occur in odd numbered years are not general elections, and the applicant may face considerable costs to have an annexation placed on these elections.

Leopard said another issue that has been discussed in the past pertains to the creation of "islands" of unincorporated territory. If the subject property is annexed, an island will be created to the west. This island will consist of about 26 parcels totaling around 15 acres.

Leopard added that in the past few years, the City has dealt with a number of annexations in this general area, mainly along Clover Ridge Road. In those cases, staff has included a clause that requires future development with lots along Clover Ridge Road to face Clover Ridge Road. This is intended to minimize backyard fences along the street. Initially, this clause was also included in the Annexation Agreement for this application, but further discussions with the applicants and the City's Transportation Engineer has resulted in removal of the clause due to the 45 mph posted speed on Knox Butte Road and the likelihood that direct access to Knox Butte Road would be restricted. Therefore, in the Annexation Agreement staff has eliminated Section 7 (on page 20) related to this issue. Because of this change, the applicants have not signed the Annexation Agreement and staff is recommending that if the Council decides to approve this annexation request, it be with the condition that approval is contingent upon the applicant signing the revised Annexation Agreement.

Councilor Konopa asked, would the revised Annexation Agreement be with item 7 removed? Leopard said yes and explained that the basic concern for annexing without zoning is that the annexation process takes much longer than any other application. In the future, when it is decided what it should be zoned, they will follow that process. Also staff and the applicants haven't been able to agree on an appropriate zoning at this time, partly because the Buildable Lands Inventory indicates that the City has a surplus of single family property. The applicants wanted to get the annexation over with, then in the future look at the market to decide on the most appropriate zoning for the property.

Johnson asked, is this the exception? Leopard said that this is different. In the last year or so staff has separated annexations from the zoning of the property, partly to allow appeals on either issue to be separated.

Applicant

Don Kelly, 110 North 2nd Street, Silverton, thanked staff saying that they were very helpful. He introduced Mr. & Mrs. Miles, the applicants, and Engineer Mark Grenz. Kelly said they have been in touch with the two neighboring property owners and they are in the middle of negotiations. That is not a legal issue that affects the annexation. On San Felicia Avenue there have been difficulties with septic tanks and they may have access to infrastructure when this property gets developed. Regarding separating the zoning from the annexation, he said Oregon land use laws are a long process to follow and with the uncertainty of the housing market, they believe taking one step at a time is a more reasonable approach. They will be dealing with the zoning later. He understands that it would create an island and he referred that issue to city Attorney Jim Delapoer for Council options. He said the Planning staff and the Planning Commission have recommended that it go to the voters. The applicants are asking the Council to recommend it to the voters as well.

No one else wished to speak.

Bedore closed the public hearing at 7:36 p.m.

Konopa wanted more information regarding item 7. Delapoer said that what is being proposed is that the decision of what direction the lot faces be determined at a later date. The Council can impose subdivision standards at any time, later. If staff knew for certain that the Council wanted street orientation towards Knox Butte Road, given the speed on the road, then the City would want it in the annexation agreement. This exclusion is not precluding anything, just not making the decision now.

Konopa said in the past the Council wanted more teeth in the agreement because they had more influence at this time to have the buildings orientated towards the street. She supports a livable development.

Councilor Olsen asked, can that question come back to the Council with the site plan? Community Development Director Greg Byrne said that it could. He said there are safety concerns regarding the orientation as well as design issues. As staff they want to exercise design options that the Council wants. He would not advise calling up individual development reviews at this stage because they don't even know what the zoning is for the property.

Councilor Christman said all that the Council is deciding is the annexation tonight; not zoning. Therefore, it could be zoned something other than residential later on. Debating that issue now is not critical and he believes the Council will have more flexibility later.

Konopa said she was concerned that the annexation process no longer contains the zoning. She said in the past the Council would see the site plans so the voters would know what they would be voting on. Right now the voters wouldn't know what would be happening to the property. It could be commercial, multi-family, or low density. She would prefer zoning be included at this phase. Leopard said the zoning proposals would have to come to the Council for approval. Konopa said, but the voters wouldn't get to vote on it.

Johnson asked if there were any water lines available in the area. Leopard said there is none. Johnson said that may be a plus for other property owners if they bring water out there. She was concerned about the creation of the island.

Collins was concerned about the island as well. He asked if any staff has contacted the properties in the island. Leopard said that the applicants said they contacted property owners in the island area who said they weren't opposed to the annexation being proposed, but they didn't want to join the annexation right now. Collins said, we know we have septic problems in that area and there is limited water supply with the wells, so eventually there will be health issues and the City may end up funding a solution to a bigger problem. He doesn't like a hop scotch approach to annexation, he would prefer for more of the property owners to consent to come into the City. He believes it puts the City in a bad position.

Delapoer explained that with an island the City Council could put the proposal of an annexation of the island before the voters without the consent of the property owners. If there is a health problem there now, currently the Council does not have the right to bring it before the voters. If it is an island the Council makes the call.

Konopa doesn't believe it is fair to compel property owners into the City. She is against island annexation. She asked, how many people were notified of this public hearing? Leopard said everyone within the surrounding 300 feet of the boundary.

Johnson asked, were the people in the area contacted about what shape their wells and sewers are in? Leopard said no. He explained that there are two or three properties that were unable to get repair permits from Linn County.

City Manager Wes Hare said generally people outside city limits want to stay out there.

Christman said one of the advantages of bringing the property into the City is that it allows ordinances to be applied to the property.

MOTION: Christman moved to approve the annexation with the condition that the owners sign a revised annexation agreement. Johnson seconded the motion and it failed 2-4, with Konopa, Councilor Reid, Collins, and Olsen voting no.

MOTION: Konopa moved to tentatively deny the request for the Council to propose the annexation of properties located on Knox Butte Road SE and forward the question of annexation to the voters on the November 4, 2008, ballot, and direct staff to prepare findings to support denial. Reid seconded the motion and it passed 5-1, with Christman voting no.

LA-05-08 and MN-01-08, 1020 and 1110 Hill Street SE, appealing the Planning Commission's approval of Modification to a Nonconforming Use to allow a change from industrial use to an automotive repair business.

Bedore said that based on technical problems and the resulting inability to use their power point presentation, the opponent asked the Council to consider taking up this issue at another meeting.

Tim and Paula Connaghan, 845 SW 29th Avenue, the applicants, objected to a postponement because delays are costing them time and money.

Delapoer asked staff where the project was regarding the 120-day time line. Planning Manager Don Donovan said that 120 days would be up on September 11. It would be possible to postpone to the August 27 or September 10 meeting.

MOTION: Collins moved to deny the request for postponement and hold the public hearing tonight. Johnson seconded the motion and it passed 5-1, with Reid voting no.

Bedore opened the public hearing saying this is a consolidated quasi-judicial public hearing regarding an appeal of the Planning Commission's approval of a Modification to a Non-conforming Use to allow a change from an industrial use to an automotive repair business and a property line adjustment that would transfer approximately 0.4 acres of land from Linn County Assessor's Map No. 11S-3W-7AC; Tax Lot 102 to Tax Lot 104. The applicant is Crabtree Automotive Incorporated. These are City of Albany case files MN-01-08 and LA-05-08.

Bedore asked if any members of the City Council wished to abstain. No one did.

Bedore asked if any members of the City Council wished to declare a conflict of interest, or report any significant ex parte contact or a site visit. Reid and Konopa said they drive by the business on a regular basis during a normal working day.

Staff Report

Donovan said the property is made up of two separate parcels of land located on Hill Street south of 9th Avenue, at 1020 and 1110 Hill Street. The property is currently owned by Terry Shores, but Timothy and Paula Connaghan plan to buy the property. The Connaghans own Crabtree Automotive and want to move the business to an existing warehouse on the property. The property line adjustment would adjust the boundary between the two parcels. The Crabtree Automotive auto repair business would be located on one of the parcels and the Connaghans say they would sell the other parcel. There have been a variety of industrial uses on this property for at least 30 years. The property was zoned Heavy Industrial (HI) until 2003, when the City changed the zoning to Office Professional (OP) as part of periodic review of the zoning map. There is an industrial use on the property now. Industrial uses are not allowed in OP zones. The industrial use on the property became what's called a non-conforming use when the zoning was changed to OP. The long term objective of zoning the property OP is to establish office uses on the property that will be more consistent with the operations of the retail stores and offices on surrounding properties. Generally, non-conforming uses are allowed to continue until someone is ready to establish an office use on the property. The Albany Development Code also allows non-conforming uses to be modified. The Connaghans have applied to modify the existing use of the property.

There are four review criteria that have to be met for the application to be approved. When the City's Planning Division receives an application, staff provides a report that explains how the application meets the review criteria or how the application can meet the review criteria if conditions of approval are required. When the City holds a public hearing, the staff report goes to the City Council and is made available to the public about a week before the hearing so everyone has a chance to see it. One of the neighbors asked for a public hearing. The Planning Commission held a public hearing and approved the application. Now another neighbor appealed the Planning Commission approval to the City Council.

A Property Line Adjustment application usually is just reviewed by staff, but if it is submitted with an application that follows a different review process, it follows that process as well and that is why it is included here.

Marianne McDonald appealed the Planning Commission decision to the City Council. Her appeal says that she believes that the documentation used in the review of the application is inadequate and that we should review the proposed use with the current use of the property to make the decision about whether the proposed use should be approved. Donovan said, she is correct that this is the approach that the City should use. There has been some confusion about what is the current use of the property and the Council will hear more about that. McDonald's appeal is attached to the staff report.

The first review criterion for the Modification to a Non-Conforming use requires that "The nonconforming situation was not created unlawfully." The current use of the property was approved in 1994. The property is currently used by two businesses owned by Shores. One is a business that unloads lumber from rail cars and loads it on trucks. Rail cars are pushed up a rail siding near the warehouse. Lumber is sometimes stored in the warehouse. A 2,800-square-foot cover to be used as a loading and unloading area for rail cars was approved in 1994. The other business is called the Plaque Factory. They make plaques that are sold as home decorations.

The second review criterion requires that "With mitigation measures, there will be a net decrease in overall detrimental impacts (over the impacts of the previous use or development) on the surrounding area taking into account factors such as: (a) the hours of operation; (b) vehicle trips to the site and impact on surrounding on-street parking; (c) noise, vibration, dust, odor, fumes, glare, and smoke; (d) potential for increased litter; and (e) the amount, location, and nature of any outside displays, storage, or activities." When the existing use on the property was approved in 1994, the owner explained that the business operated from 7:00 a.m. to 9:00 p.m. It may not still operate those same hours. The automotive repair business will operate from 8:00 p.m. to 5:00 p.m., Monday through Friday. In written information submitted with the application, the applicants explain that the current business averages 20 rail cars a month and 60 semi-trucks a month. The proposed

automotive repair business will not use any rail cars and will have only an occasional truck delivery, but no semi-trucks. Tow trucks will deliver cars to the business a few times a week. This property does not have any landscaping now, except there is a thick hedge along part of the Hill Street frontage. The applicants propose to provide the number of parking spaces required for the automotive repair business on the property. The applicants also propose to landscape the front yard of the property where the warehouse is located and landscape the parking lot, all in accordance with current standards. They also propose to remodel the front of the warehouse. The applicants submitted a landscape plan and a drawing that shows the new façade of the building. A few revisions to the landscape plan are needed. The applicants have actually submitted a revised plan that is intended to address the conditions of approval listed in the staff report. Staff has not reviewed it yet. The current business uses rail cars, semi-trucks, and forklifts. The new business will not use any of this type of equipment. Outside storage was approved for this property in 1994, and there has been storage of lumber and other materials since that time. There doesn't seem to be any outside storage on the property now. The automotive repair business will not have any outside storage, except the site plan shows a fenced area on the south side of the remodeled building, which will be used for vehicle storage when cars are towed to the business. ADC 4.290(1) says that in OP zones, outside storage or display of materials, junk, parts, or merchandise is not permitted. The vehicle storage area is simply a place to park vehicles that have been towed to the business after hours. All of the cars that are being worked on will be kept inside the building. The fence will have to meet Development Code standards for fences.

The written staff report concludes that with the required conditions of approval, there will be a net decrease in overall detrimental impacts with the auto repair business over the impacts of the previous uses. The second review criterion is met as well.

The third review criterion applies only if the property is zoned residential and this property is not.

The fourth review criterion requires that "If the nonconforming use is in a commercial or industrial zone, and if any changes are proposed to the site, the appearance of the new use or development will not detract from the desired function and character of the zone." Based on the information just given, the written staff report concludes that the appearance of the new use or development will not detract from the desired function and character of the OP zone in which this property is located.

There are letters attached to the staff report from Marianne McDonald and the Rowe family who oppose approval of the Modification to a Non-Conforming Use application. There are also letters from At Home Furniture, Rhodes Warren Insurance, the Andersons, Albany Millersburg Economic Development Corporation, and the Albany Chamber of Commerce who support the project. Staff received an email from Art Powell after the staff report went to the City Council, and it has been put in front of the Council tonight. Mr. Powell supports the project.

There are four review criteria that have to be met if the Property Line Adjustment is to be approved. The written staff report includes a discussion of the criteria and how the application for these properties meets the criteria. The written staff report concludes that review criteria for a Property Line Adjustment are met by the application. There are some recommendations listed in conditions of approval for the applications.

The request for the public hearing was related to the Modification to a Non-Conforming Use application, so there was no further discussion about the Property Line Adjustment application.

Reid asked, will the reload ramp be removed? Donovan said, it is on the railroad right-of-way. That is a decision to be made by the railroad.

Applicant

Timothy and Paula Connaghan, 845 SW 29th Avenue, read a letter (in the agenda file) explaining their position. Paula Connaghan also noted that automotive shops are usually loud, but they have never been loud as they have taken precautions to be good neighbors. They are willing to do whatever the City would require to lower noise levels.

Konopa asked, where are the big doors? Connaghan answered at the north and south ends of the building. She said that because of the configuration within the building, noise is unable to get out the doors.

Konopa asked, how do you control air emissions on the inside? Connaghan said they have an air capture system.

In Support

Terry Shores, 2585 Queens Branch Road, Rogue River, provided a letter (in the agenda file) explaining the property use of 1110 Hill Street SE. He said that they run a CNC Router and it is very loud, but when outside of the building, you cannot hear it. He believes Crabtree Automotive will improve the property.

In Opposition

Marianne McDonald, owns 915 S 15th Avenue but currently lives in Salem, said she doesn't feel the criteria were met. Specifically she doesn't believe the noise criteria were met. She provided a handout with signatures on it requesting that the application be denied (in the agenda file). She walked the Council through a paper adaption of her PowerPoint presentation (in agenda file). She emphasized that the current levels of activity at the property are infrequent deliveries, with normally only two cars on the site. The south doors are not opened and noise is rarely audible to neighboring residents. They are concerned that the noise levels from the auto repair shop will be significantly higher. She feels the noise level will detract from the property values and cause a financial burden if property were to be sold and even cause a detriment to current rental price. She also mentioned that the OP zoning designation provides a buffer between the residential area and the commercial areas with more intensive uses. She asked that if the modification gets approved, there be a condition to construct a masonry wall to screen noise and unsightly materials. She also believed that the business could be considered an attractive nuisance appealing to people interested in stealing materials for resale and thus raise the crime level in the neighborhood. She included in her summary: noise will be of longer and more intense duration; one driveway will be serving three business locations; neighboring wells may be jeopardized by runoff of oil, gas, antifreeze, and diesel; there is no fire access to the back of the building; there would be significant increases of daily traffic; and there will be an increase in after hours delivery of vehicles by tow truck.

Bedore asked that other people wanting to testify in opposition not repeat this same testimony. If they wish to come forward to voice their opposition they can do so by saying they support McDonald's points.

Norma Rice, 1220 Hood Street, said she has lived in the neighborhood since 1978 and has watched it change. The only noise she has heard from the current business was one pallet scrapping across concrete. She too is questioning the low noise levels claimed by the applicants.

Tim Rowe, 905 12th Avenue, agrees with all that has been said. He said there is a two-story house across the street from the property that would be impacted much more by the noise and he doesn't feel a six-foot fence would be enough of a buffer for the second story.

Neither in Favor nor Oppose

Alva Anderson, 1100 Madison Street, said he lives in the closest house to the building. The building has been an eyesore for years. He believes it would be an asset to have a business there. He thinks property values would go up. He has never heard any noise and has lived there for over 13 years. If they are going to insulate the doors and walls, he thinks that will muffle the noise more.

Rebuttal

The Connaghans said all automotive shops make noise. If neighbors can't hear routers now, then they won't hear their business either; and they are willing to accommodate if there is a problem. They do not work after regular working hours. Regarding crime, they are going to fix up and fill the holes that have been used by transients and they have a locked yard now, so there should be no problem. Their compressor is in the building. The driveway that services three businesses, the City is happy with because the City prefers not to have more driveways on Hill Street. There would be more traffic if there was an office building there instead of them. The fire lane has already been approved. The water would not be contaminated. They are registered with the Environmental Protection Agency. The loading dock is not an issue. Trash bins will be locked. The Connaghans think they would be a good addition to the neighborhood. The property abuts a light industrial zoned area and if there is a noise problem, they will address it.

Christman asked, do you have any objection to putting in fencing and noise barriers? Connaghan said they would prefer not to have to put up a concrete wall, but they have no objections.

Johnson asked, where would you store materials like batteries? Connaghan said they are stored indoors and batteries are recycled.

Johnson asked if they had a security system. Connaghan said they have an alarm system and they don't keep anything outside that is of value. They had always planned on eventually putting up a fence. They have never stored a car outside and of course want to secure their materials. Johnson said it sounds like it is a family owned business that would be an asset to the neighborhood.

Bedore closed the public hearing at 9:21 p.m.

Donovan explained the Department of Environmental Quality (DEQ) regulations regarding noise.

Collins said he feels the issues here were based on fears and speculations, and believes many of them could have been taken care of if the parties had been willing to negotiate with each other.

MOTION: Collins moved to tentatively approve with modified conditions, including providing screening and complying with DEQ noise regulation 340-035-0035, the applications for the Modification to a Non-

Conforming Use and the Property Line Adjustment for property located at 1020 and 1110 Hill Street SE. Johnson seconded the motion.

There followed Council discussion regarding the use of trees as a noise barrier.

AMENDING MOTION: Konopa moved to amend the main motion to include trees on the south side of the property as a buffer. Reid seconded the motion and it passed 6-0.

VOTE ON MAIN MOTION: A vote was taken on the main motion and it passed 6-0.

Bedore explained that the vote sets a tentative decision and the approval will be back to the Council for a formal adoption.

Delapoe explained that the decision may be appealed to LUBA, by filing a Notice of Intent to Appeal, 21 days after the decision becomes final.

Business from the Public

Bill Root, 2634 Valley View Drive, said Carol Steele lives adjacent to property in Benton County. She has concerns about coyotes killing her pet kittens. Is there anything the City can do regarding the coyote problem? Benton County said they could be shot as long as they were outside the City limits. She has tried to trap them and has been unsuccessful. She has not been able to contact the property owner.

Reid commented that after years of North Albany complaining about wanting to remain rural, now they have a rural problem that they want the City to solve.

Hare said he would be willing to talk to the Oregon Department of Fish and Wildlife.

Root also complimented the Gibson Hill Road crossing area signs.

Adoption of Resolution

Accepting a local government grant from the Oregon Parks and Recreation Department to develop a new neighborhood park on Oak Street, appropriating funds, and authorizing the Parks and Recreation Director to sign the grant agreement.

Parks Director Ed Hodney commented that staff had a very good meeting with the neighborhood.

Konopa asked if the design and specifics of the park will come back to the Council. Hodney said he would bring it back to the Council.

MOTION: Reid moved to adopt the resolution accepting a Local Government Grant from the Oregon Parks and Recreation Department to develop a new neighborhood park on Oak Street, appropriating funds, and authorizing the Parks and Recreation Director to sign the grant agreement and related documents. Konopa seconded the motion and it passed 6-0, and was designated Resolution No. 5642.

Adoption of Consent Calendar

- 1) Approval of Minutes
 - a) June 23, 2008, Joint Work Session with Linn County Commissioners
 - b) July 7, 2008, City Council Work Session
 - c) July 9, 2008, City Council Meeting
- 2) Granting an easement to Pacific Power for new power lines to serve street lights on Waverly Drive between Grand Prairie Road and Brookside Drive. RES. NO. 5643

MOTION: Konopa moved to adopt the Consent Calendar. Reid seconded the motion and it passed 6-0.

Award of Contract

Radio Frequency Identification Tracking (RFID) and materials handling system for the Albany Public Library.

Olsen asked, is this a device so patrons don't have to see stuff standing on the floor? Library Director Ed Gallagher said mostly behind the scenes. For instance, when a patron returns materials it will be on a conveyor belt. By putting tags on every item owned by the Library, they can be scanned for inventory control. It will also allow patrons to check out their own materials. It will free up staff.

Olsen asked, can it be installed at the Carnegie Library as well? Gallagher said yes, their approach will be a little different, sized according to their need.

Collins asked, what does "primarily funded" mean under "budget impact"? Gallagher said that any difference resulting from the funds received from the endowment will be made up with fundraising. He said that he is not

asking for the Council to award this contract now, only asking for authorization to negotiate a contract. By the time he brings it back to the Council for awarding, the financial budgeting will be in place.

Christman asked, is this item critical to the new Library? Hare responded that it will enhance Library service and will free up personnel to do other things. The new Library is much larger and will require more personnel. This will free up some time at the current personnel level.

MOTION: Konopa moved to authorize staff to negotiate a contract for RFID Tracking and Materials Handling System with SirsiDynix and the Integrated Technology Group (ITG). Christman seconded the motion and it passed 6-0.

Report

Authorizing financial assistance to National Frozen Foods to evaluate wastewater treatment options.

MOTION: Collins moved to authorize financial assistance to National Frozen Foods to evaluate wastewater treatment options. Reid seconded the motion and it passed 6-0.

BUSINESS FROM THE COUNCIL

Konopa said she attended a Millersburg City Council meeting in which they discussed Albany's Call-A-Ride Program proposed expansion. It was well received and they agreed to negotiate with Albany.

Collins asked if there was follow up on the email regarding Mr. Hartman's concern about the Coastal Crossings parking problem (in agenda file). Public Information/ Management Assistant Marilyn Smith said that the City is enforcing the Municipal Code and the owners are receiving tickets.

Olsen asked if citizens aren't watering their lawns because of the cost of water or if there is not enough water being distributed. Public Works Director Diane Taniguchi-Dennis said that people are choosing to conserve water. Christman said that during the Water Task Force meetings there was discussion about allowing some sort of reduced rate when more water was used, for instance in the summer months, but the direction was to prioritize conservation. Dennis said there is plenty of water.

Bedore said he and staff had a meeting with the Signs of Victory Albany Mission about moving its operation from 705 Lyon Street. They considered other sites and he feels it was a constructive discussion.

Bedore attended a Pedestrian and Bicycle Safety Commission meeting and challenged bicyclists to join him on a short ride starting at 9:00 a.m., August 24, in the Costco parking lot. They would go to Timber-Linn Memorial Park to attend the Northwest Art & Air Festival. The cycling event would serve as a kick-off to September's bike commute month.

Hare suggested the Council revisit the ordinance regarding allowing people to follow a process to waive the two dogs per household maximum in the City. He will bring an ordinance and discussion back to the Council.

Smith reported on the clean-up at 330 Marilyn Street.

NEXT MEETING DATE

The next Work Session of the City Council is scheduled for Monday, August 25, 2008, at 4:00 p.m., in the Municipal Court Room, at City Hall, and the next Regular Session is scheduled for Wednesday, August 27, 2008, at 7:15 p.m., in the Council Chambers, at City Hall.

ADJOURNMENT

There being no other business, the meeting was adjourned at 10:08 p.m.

Respectfully submitted by,

Reviewed by,

Betty Langwell, CMC
City Clerk

Stewart Taylor
Finance Director

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantor

Purpose

Carl Eckhold & Amber Eckhold

A 10-foot wide easement along eastern property line over an existing sewer main.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement.

DATED AND EFFECTIVE THIS 10TH DAY OF SEPTEMBER 2008.

Mayor

ATTEST:

City Clerk

EASEMENT FOR PUBLIC UTILITIES

THIS AGREEMENT, made and entered into this 16th day of July, 2008, by and between **Carl Eckhold & Amber Eckhold**, hereinafter called Grantor, and the CITY OF ALBANY, a Municipal Corporation, herein called "City."

WITNESSETH:

That the Grantor has this day granted unto the City of Albany, easement and right-of-way, including the right to enter upon the real property hereinafter described, and to maintain and repair public utilities for the purpose of conveying public utilities services over, across, through, and under the lands hereinafter described, together with the right to excavate and refill ditches and/or trenches for the location of the said public utilities and the further right to remove trees, bushes, under-growth, and other obstructions interfering with the location and maintenance of the said public utilities.

This agreement is subject to the following terms and conditions:

1. The easement hereby granted consists of:

A 10-foot wide easement lying west of the following described line:

Beginning at a 3/4 inch rod, as described in Linn County Survey No. 4786, said point being the northeast corner of Lot 14, Block 4, of Motley's Addition to the City of Albany, and conveyed to Carl Eckhold & Amber Eckhold as described in DN2008-251, Linn County Deed Records, Linn County, Oregon; thence southerly 60-feet more or less along the east property line of the said property to a 3/4 inch bolt, said point being the southeast corner of the herein described property, as shown on the attached Exhibit 'A'.

2. In order that the work may be done in a timely and complete manner, we hereby agree to grant and allow a temporary right of entry for construction access to the City, its representatives and to the Contractor, for access to, upon and over our property for planning and construction of a sanitary sewer, service connection, and such appurtenances as are required to make the project complete. It is understood and agreed that this access agreement shall terminate on the date that such work has been satisfactorily completed and accepted by the City of Albany.
3. The permanent easement described herein grants to the City, and to its successors, assigns, authorized agents, or contractors, the perpetual right to enter upon said easement at any time that it may see fit, for construction, maintenance, evaluation and/or repair purposes.
4. The City agrees to replace the sanitary sewer service lateral one time only. The purpose of the replacement is to reduce infiltration to the public sanitary sewer system and protect the public health.
5. The Grantor does hereby covenant with the City that they are lawfully seized and possessed of the real property above described and that they have a good and lawful right to convey it or any part thereof and that they will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.
6. Upon performing any maintenance, the City shall return the site to original or better condition.
7. The Grantor and the City acknowledge that if a structure exists on the public utilities easement described herein either additional permanent structures or additions to the existing structure may not be constructed

on the public utilities easement. If the existing structure is removed from the public utility easement, no permanent structure may be reconstructed in its place.

- 8. Should the City determine that maintenance, repair, or reconstruction of the utilities located under the structure requires the removal or alteration of said structure, the City may undertake such removal or alteration as may be needed. In such event, however, the City shall, upon completion of said maintenance, repair, or reconstruction, restore the structure at City expense to its original or better condition.

IN WITNESS WHEREOF, the Grantor has hereunto fixed their hand and seal the day and year written below.

GRANTORS:

Carl Eckhold
Carl Eckhold

Amber Eckhold
Amber Eckhold

STATE OF OREGON)
County of Linn) ss.
City of Albany)

STATE OF OREGON)
County of Linn) ss.
City of Albany)

The foregoing instrument was acknowledged before me this 16th day of July, 2008, by Carl Eckhold as his/her voluntary act and deed.

The foregoing instrument was acknowledged before me this 16th day of July, 2008, by Amber Eckhold as his/her voluntary act and deed.



Kevin L. Hamilton
Notary Public for Oregon
My Commission Expires: 10/7/2011

Kevin L. Hamilton
Notary Public for Oregon
My Commission Expires: 10/7/2011

CITY OF ALBANY:

STATE OF OREGON)
County of Linn) ss.
City of Albany)

I, Wes Hare, as City Manager of the City of Albany, Oregon, pursuant to Resolution Number _____, do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this _____ day of _____ 2008.

City Manager

ATTEST:

City Clerk

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE FOLLOWING EASEMENT:

Grantors

Daniel K. Watson and Andrea M. Watson

Purpose

A public sidewalk, storm drainage and slope easement for the construction of a new public sidewalk on the east side of North Albany Road.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this easement.

DATED AND EFFECTIVE THIS 10TH DAY OF SEPTEMBER 2008.

Mayor

ATTEST:

City Clerk

PUBLIC SIDEWALK, STORM DRAIN AND SLOPE EASEMENT

THIS AGREEMENT, made and entered into this 30th day of July, 2008, by and between Daniel K. Watson and Andrea M. Watson, hereinafter called Grantor, and the CITY OF ALBANY, a Municipal Corporation, herein called "City."

WITNESSETH:

That for and in consideration of the total compensation to be paid by the City, the grantor has this day bargained and sold and by these presents does bargain, sell, convey, and transfer unto the City of Albany, an easement and right-of-way, including the right to enter upon the real property hereinafter described, and to place, maintain and repair public sidewalk, storm drain and a fill slope for the purpose of conveying public sidewalk and drainage over, across, through, and under the lands hereinafter described, together with the right to excavate and refill ditches and/or trenches for the location of the said public sidewalk, storm drain and fill slope and the further right to remove trees, bushes, under-growth, and other obstructions interfering with the location and maintenance of the said public sidewalk, storm drain and fill slope.

This agreement is subject to the following terms and conditions:

1. The right-of-way hereby granted consists of:

See legal description on attached Exhibit A and maps on attached Exhibit B and C.
2. The permanent easement described herein grants to the City, and to its successors, assigns, authorized agents, or contractors; the perpetual right to enter upon said easement at any time that it may see fit, for construction, maintenance, evaluation and/or repair purposes.
3. The easement granted is in consideration of \$1,600.00, receipt of which is acknowledged by the Grantor, and in further consideration of the public sidewalk improvements to be placed upon said property and the benefits grantors may obtain therefrom.
4. The Grantor does hereby covenant with the City that they are lawfully seized and possessed of the real property above-described and that they have a good and lawful right to convey it or any part thereof, ~~and that they will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.~~ *Dkw Amw*
5. Upon performing any maintenance, the City shall return the site to original or better condition.
6. Permanent structures may be constructed on this easement, subject to the requirements of the Albany Development Code.
7. The grantor may place additional fill on the fill slope.
8. The sidewalk shall be restricted to the location as constructed by the City with project ST-08-03, North Albany Sidewalk Improvements.

IN WITNESS WHEREOF, the Grantor has hereunto fixed their hand and seal the day and year written below.

GRANTORS:

Daniel K. Watson
Daniel K. Watson

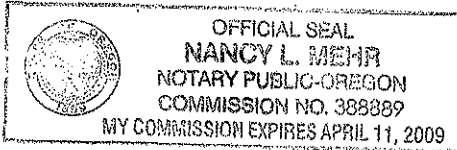
Andrea M. Watson
Andrea M. Watson

STATE OF OREGON)
County of Linn) ss.
City of Albany)

STATE OF OREGON)
County of Linn) ss.
City of Albany)

The foregoing instrument was acknowledged before me this 30th day of July, 2008, by Daniel K. Watson as his voluntary act and deed.

The foregoing instrument was acknowledged before me this 30th day of July, 2008, by Andrea M. Watson as her voluntary act and deed.



Nancy L. Mehr
Notary Public for Oregon
My Commission Expires: April 11, 2009

Nancy L. Mehr
Notary Public for Oregon
My Commission Expires: April 11, 2009

CITY OF ALBANY:

STATE OF OREGON)
County of Linn) ss.
City of Albany)

I, Wes Hare, as City Manager of the City of Albany, Oregon, pursuant to Resolution Number _____, do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this _____ day of _____ 2008.

City Manager

ATTEST:

City Clerk

Exhibit "A"
(Watson Easement)

A tract of land lying in the Southeast 1/4 of Section 36, Township 10 South, Range 4 West, Willamette Meridian, City of Albany, Benton County, Oregon, said tract being a portion of that property described in Document Number 2007-420888, Benton County Records, and more particularly described as follows:

Beginning at the northwest corner of that property described in Document Number 2007-420888, Benton County Deed Records, said corner also being coincident with the east right-of-way line of North Albany Road (County Road 14400); thence South 87°27'40" East, on the north line of said property, a distance of 8.49 feet; thence South 16°06'17" East 25.22 feet; thence South 09°36'15" East 49.30 feet; thence South 05°50'02" East 32.85 feet to a point on the south line of said property that is 50.00 feet distant from the centerline of North Albany Road; thence South 65°22'23" West on said line, a distance of 21.40 feet to the southwest corner thereof, said corner also being coincident with the east right of way line of said road; thence North 03°46'47" West, on said right-of-way line, a distance of 115.05 feet to the Point of Beginning, all as shown on the map attached as "Exhibit "B" and made a part hereof.

The bearings used for this description were based on County Survey No. 10228.

July 11, 2008
EXHIBIT "A"
WATSON EASEMENT
(08-27-D) JSM:nm
File: nm\shared\legals\08-27-d Watson.doc

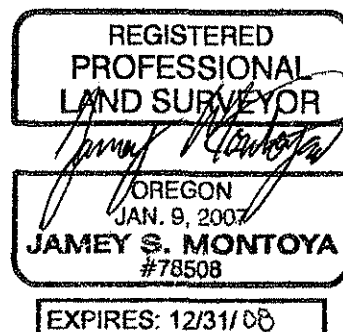
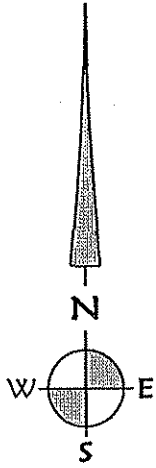


EXHIBIT "B" EASEMENT FOR CITY OF ALBANY

LOCATED IN
SE 1/4 SEC. 36, T. 10 S., R. 4 W., W.M.
CITY OF ALBANY, BENTON COUNTY, OREGON
JULY 10, 2008



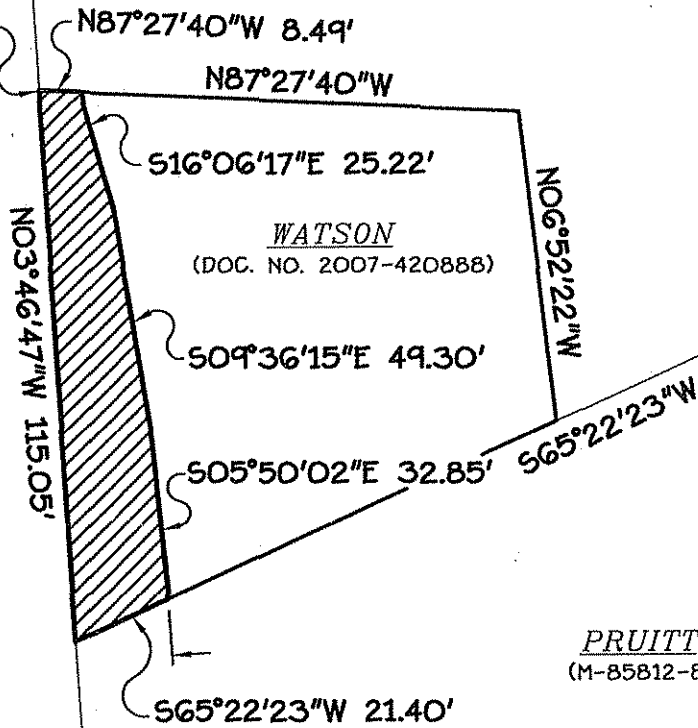
SCALE: 1" = 40'

SEE COUNTY SURVEY NO. 10228

MORRIS & STANLEY
(DOC. NO. 2007-422603)

POINT OF BEGINNING

NORTH ALBANY ROAD
(COUNTY ROAD 14400)



PRUITT
(M-85812-87)

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JAN. 9, 2007
JAMEY S. MONTOYA
#7850B

EXPIRES: 12/31/08

Date: 7/11/2008

Time: 8:41

Scale: 1=1(P5)

File: dwg\2008\08-27-D\0827d-exA.dwg (Jamey M)



K & D ENGINEERING, Inc.
276 N.W. Hickory Street P.O. Box
Albany, Oregon 97321
(541) 928-2583

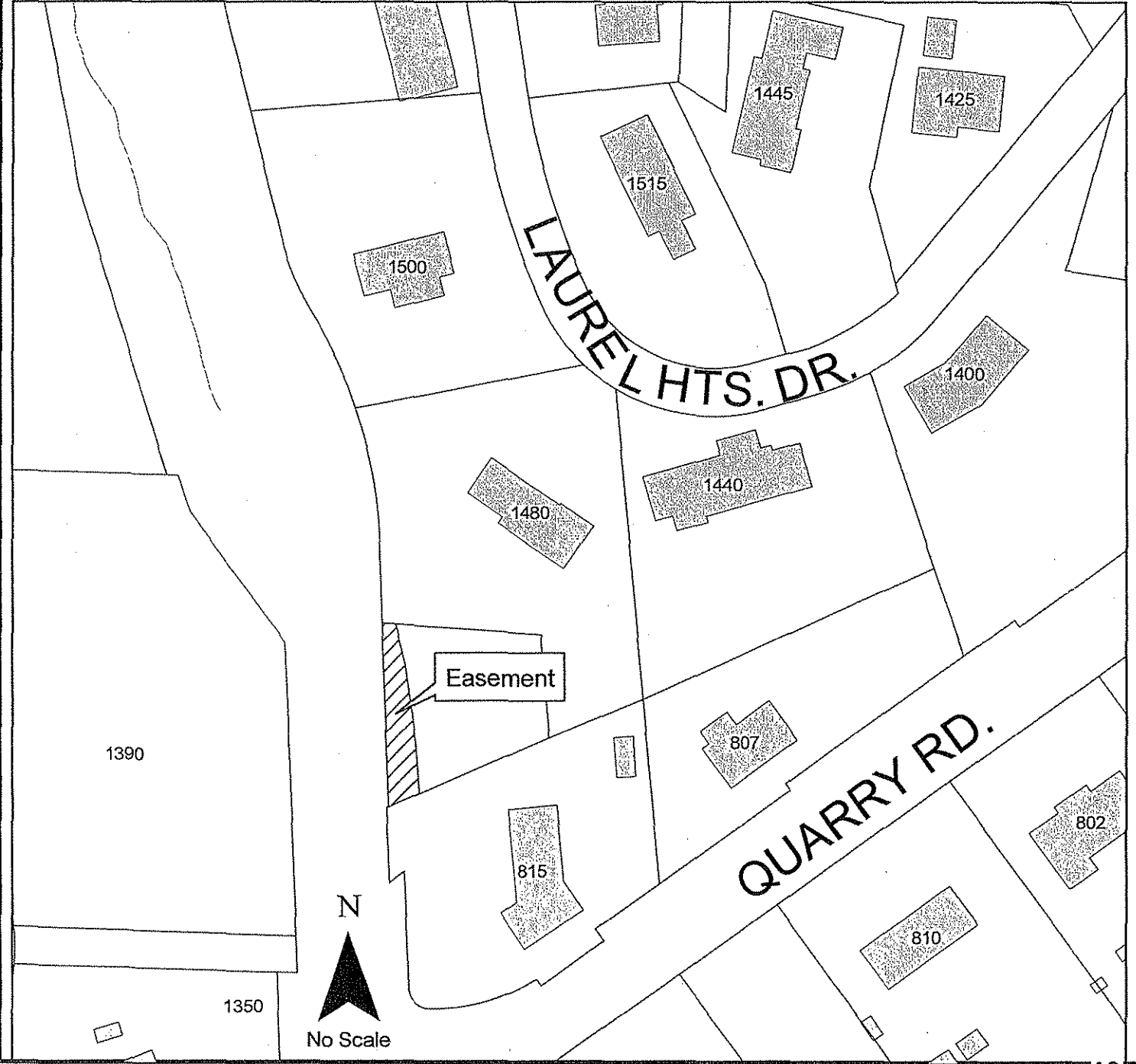
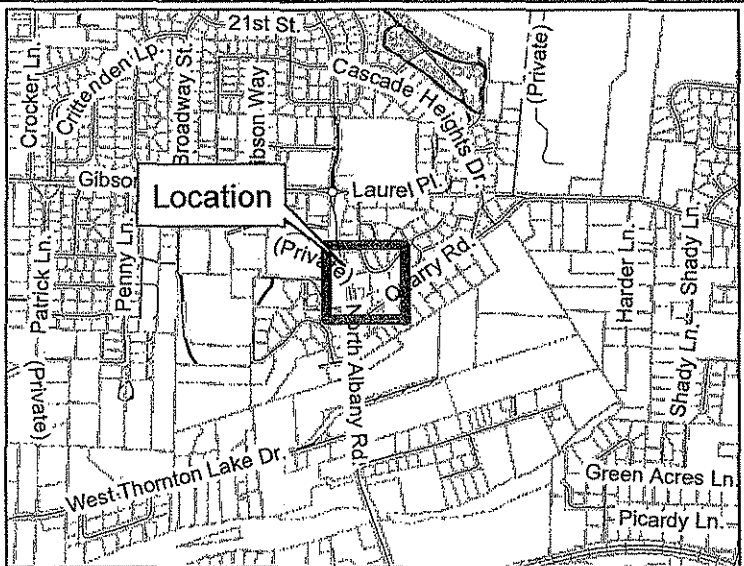
EXHIBIT C

10S04W36DA03603

Public Sidewalk, Storm Drain
and Slope Easement



Geographic Information Services



RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE FOLLOWING RIGHT-OF-WAY DEDICATION:

Grantor

Gloria Rose Pruitt

Purpose

A right-of-way dedication for the construction of a new public sidewalk on the east side of North Albany Road.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that it does hereby accept this right-of-way dedication deed.

DATED AND EFFECTIVE THIS 10TH DAY OF SEPTEMBER 2008.

Mayor

ATTEST:

City Clerk

RIGHT-OF-WAY DEDICATION

KNOW ALL MEN BY THESE PRESENTS, that Gloria Rose Pruitt, hereinafter referred to as Grantor, hereby dedicate to the City of Albany, a Municipal Corporation, hereinafter called "City" for right-of-way purposes, portions of that real property situated in Benton County, Oregon, conveyed to Grantors by deed recorded in M-85812-87, Benton County deed records, and being more particularly described as follows:

A piece of land in Section 36 of Township 10 South in Range 4 West of Willamette Meridian, City of Albany, Benton County, Oregon as described in the attached Exhibit A, as shown on the attached map labeled Exhibit B and the attached vicinity map labeled Exhibit C.

The Grantor covenants that they are lawfully seized and possessed of the real property above described and that they have a good and lawful right to convey it or any part thereof and that they will forever warrant and defend the same against all persons who may lawfully claim the same.

The right-of-way dedicated herein is in consideration of \$5,400.00, receipt of which is acknowledged by the Grantor, and in further consideration of the public improvements to be placed upon said property and the benefits grantors may obtain therefrom.



IN WITNESS WHEREOF, the Grantor has hereunto fixed their hand and seal the day and year written below.

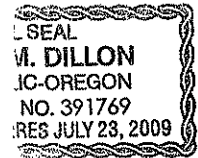
GRANTOR:

Gloria Rose Pruitt
Gloria Rose Pruitt



STATE OF OREGON)
County of Linn) ss.
City of Albany)

The foregoing instrument was acknowledged before me this 24th day of July, 2008, by Gloria Rose Pruitt as her voluntary act and deed.



[Signature]
Notary Public for Oregon
My Commission Expires: July 23, 2009

CITY OF ALBANY:

STATE OF OREGON)
County of Linn) ss.
City of Albany)

I, Wes Hare as City Manager of the City of Albany, Oregon, pursuant to Resolution Number _____, do hereby accept on behalf of the City of Albany, the above instrument pursuant to the terms thereof this _____ day of _____ 2008.

City Manager

ATTEST:

City Clerk

Exhibit "A"
(Pruitt Dedication)

A tract of land lying in the Southeast 1/4 of Section 36, Township 10 South, Range 4 West, Willamette Meridian, City of Albany, Benton County, Oregon, said tract being a portion of that property described in M-85812-87, Benton County Deed Records, and more particularly described as follows:

Beginning at a point on the north line of that property described in M-85812-87, Benton County Deed Records, said point being 50.00 feet distant from the centerline of North Albany Road (County Road No. 14400); thence South 02°16'19" West 47.43 feet to a point that is 45.00 feet distant from said centerline; thence South 03°46'47" East, parallel with said centerline, a distance of 83.82 feet to the south line of said property; thence 11.76 feet on the arc of a 13.00 foot radius curve to the right (chord bears North 29°53'32" West 11.36 feet), to a point on the east right-of-way line of said road; thence on said line the following three courses: 1) North 03°46'47" West 73.10 feet, 2) South 52°27'07" West 12.03 feet, 3) North 03°46'47" West 46.75 feet to the northwest corner of said property; thence North 65°22'23" East, on the north line thereof, a distance of 21.40 feet to the Point of Beginning, all as shown on the map attached as "Exhibit "B" and made a part hereof.

This description was based on data from County Survey No. 10228 and County Survey No. 8721.

July 11, 2008
EXHIBIT "A"
PRUITT DEDICATION
(08-27-D) JSM:nm
File: nm\shared\legal\08-27-d Pruitt.doc

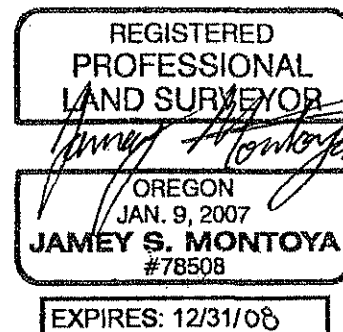


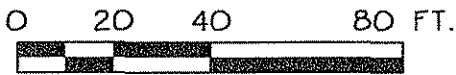
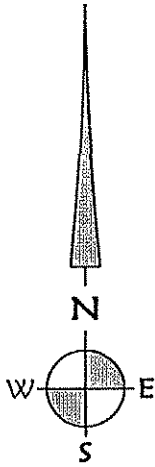
EXHIBIT "B"

R.O.W. DEDICATION

FOR

CITY OF ALBANY

LOCATED IN
 SE 1/4 SEC. 36, T. 10 S., R. 4 W., W.M.
 CITY OF ALBANY, BENTON COUNTY, OREGON
 JULY 10, 2008



SCALE: 1" = 40'

SEE COUNTY SURVEY NO. 10228

WATSON
 (DOC. NO. 2007-420888)

N65°22'23"E 21.40'

565°22'23"W

506°33'57"E

50.00'

N03°46'47"W 46.75'

NORTH ALBANY ROAD
 (COUNTY ROAD 14400)
 N03°46'47"W

POINT OF BEGINNING

502°16'19"W 47.43'

PRUITT
 (M-85812-87)

SEE COUNTY SURVEY NO. 8721

552°27'07"W 12.03'

503°46'47"E 83.82'

45.00'

N03°46'47"W 73.10'

L = 11.76'
 R = 13.00'
 CH = N 29°53'32" 11.36'

NW QUARRY ROAD
 (COUNTY ROAD 04042)

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
Jamey Montoya
 OREGON
 JAN. 9, 2007
JAMEY S. MONTOYA
 #78508
 EXPIRES: 12/31/08

Date: 7/11/2008 Time: 8:34
 Scale: 1=1(P5)
 File: dwg\2008\08-27-D\0827d-exA.dwg (Jamey M)



K & D ENGINEERING, Inc.
 276 N.W. Hickory Street P.O. Box
 Albany, Oregon 97321
 (541) 928-2583

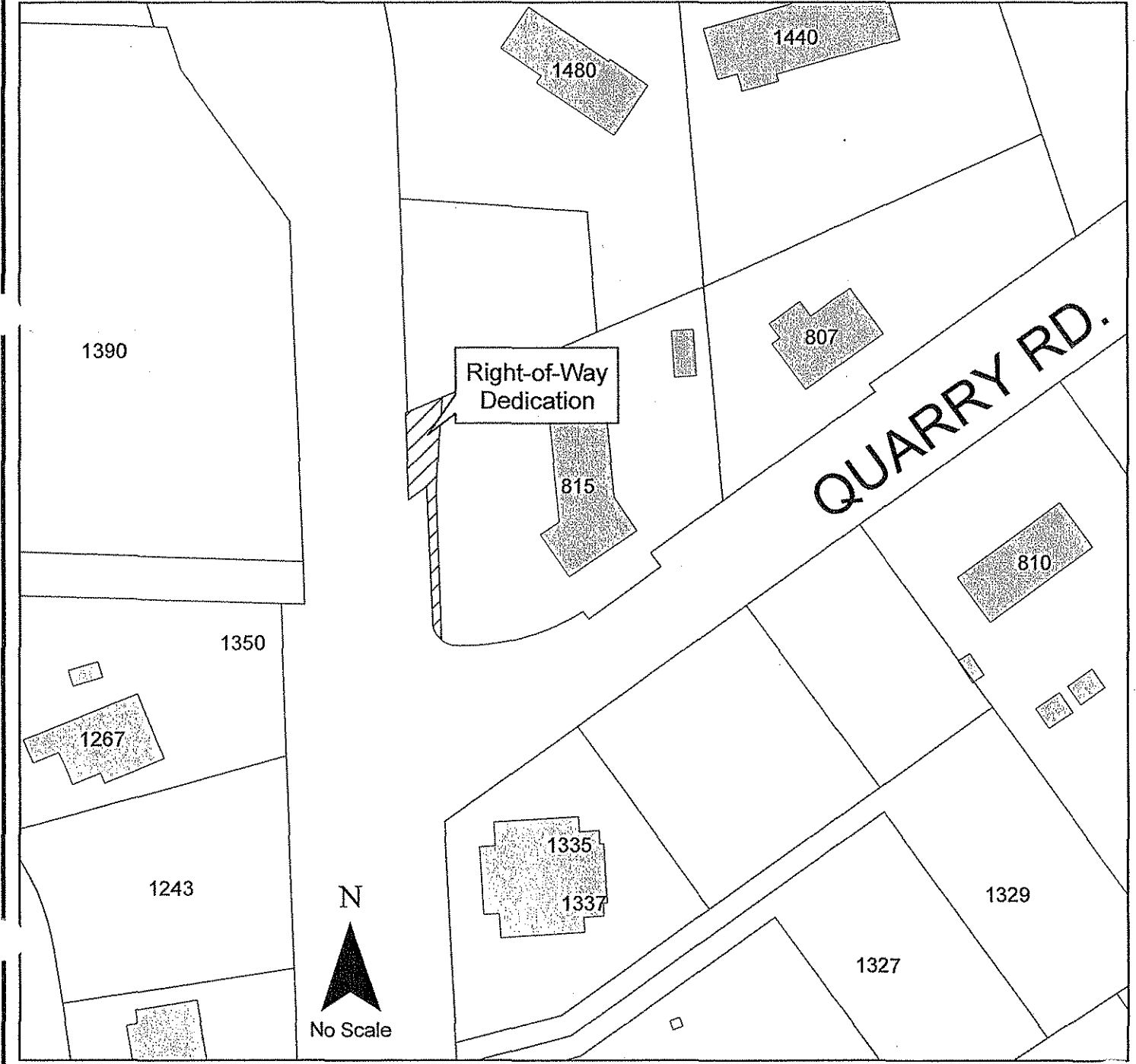
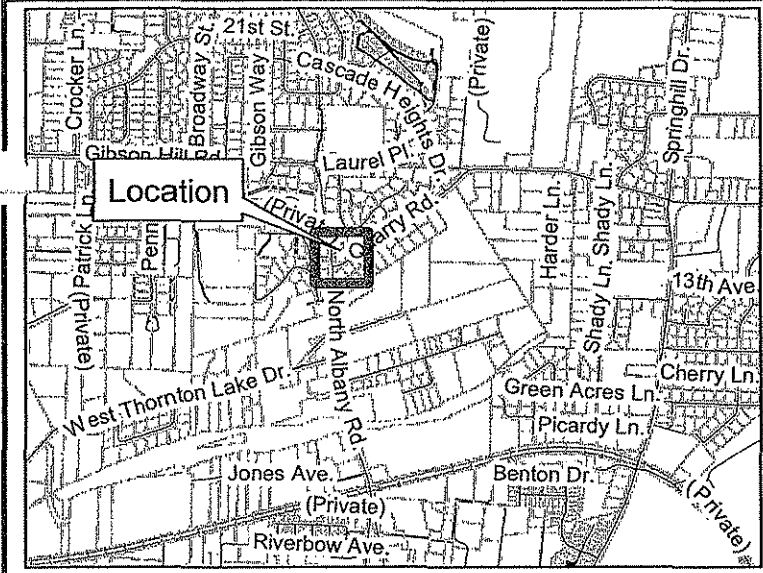
EXHIBIT C

10S04W36DA03700

A right-of-way dedication for the construction of a public sidewalk.



Geographic Information Services



RESOLUTION NO. _____

A RESOLUTION APPOINTING CITY MANAGER PRO TEMS AND REPEALING RESOLUTION NO. 5622

BE IT RESOLVED that in the absence or inability of City Manager Wes Hare to perform the duties of city manager, the Albany City Council authorizes the following individuals to assume the position of City Manager Pro Tem:

Boyd, Ed, Police Chief
Hodney, Ed, Parks & Recreation Director
Taniguchi-Dennis, Diane Public Works Director
Taylor, Stewart, Finance Director

BE IT FURTHER RESOLVED that City Manager Wes Hare will make a specific assignment as needed; and

BE IT FURTHER RESOLVED that Resolution No. 5622 is hereby repealed.

DATED AND EFFECTIVE THIS 10TH DAY OF SEPTEMBER 2008.

Mayor

ATTEST:

City Clerk



TO: Albany City Council

VIA: Wes Hare, City Manager

FROM: *Edward Boyd*
Edward Boyd, Chief of Police

DATE: September 2, 2008, for September 10, 2008, City Council Meeting

SUBJECT: Full On-Premises Sales, Change Ownership, Liquor License Application for Chasers Bar & Grill, LLC, D/B/A Chasers Bar & Grill, 435 Second Avenue.

Action Requested:

I recommend the Full On-Premises Sales, Change Ownership, Liquor License Application for Chasers Bar & Grill, LLC, D/B/A Chasers Bar & Grill, be approved.

Discussion:

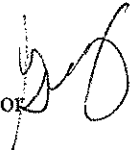
Keith Gerger, Brent Gerger, Kimberly Gerger and Samantha Gerger, on behalf of Chasers Bar & Grill, LLC, D/B/A Chasers Bar & Grill, has applied for a Full On-Premises Sales, Change Ownership liquor license. Based on a background and criminal history investigation through Albany Police Department records, I recommend approval of this request.

Budget Impact:

None.

MR



TO: Albany City Council
VIA: Wes Hare, City Manager
FROM: Greg Byrne, Community Development Director 
DATE: September 4, 2008, for the September 10, 2008, City Council Meeting
SUBJECT: Planning File SD-05-08, Thornton Lake Estates Subdivision LUBA Remand

Action Requested:

Establish a procedure for conducting the remand proceedings required by the Land Use Board of Appeals (LUBA) decision on the Thornton Lake Estates Subdivision City Council approval.

Discussion:

On January 9, 2008, the City Council approved the Thornton Lake Estates subdivision. After the public comment period was closed, but before the City Council decision, the Council considered a memorandum from Transportation Analyst Ron Irish. Mr. Irish also spoke to the Council concerning traffic impacts of the subdivision and historic accident data.

The City Council approval was appealed to LUBA. LUBA concluded that, while most of the grounds for appeal were unfounded, a procedural error was committed by not providing the public an opportunity to respond to Mr. Irish's evidence. While a strong argument could be made that the only new evidence that was provided by Mr. Irish, to which a response should have been allowed concerned the number of accidents that have occurred in the area, staff recommends that we take a conservative approach and allow the public to comment on anything contained with Mr. Irish's memo to the City Council or his oral comments following the close of public testimony.

In its remand order, LUBA has not suggested the City needs to hold a new hearing or that the City needs to reconsider all of the issues that went into the Council's original decision to approve the subdivision. Given that the Council has already heard an unprecedented amount of public testimony over a multitude of meetings, and given the desire to focus public comments on the narrow issue addressed in the remand, staff recommends that, rather than holding a new public hearing, the Council direct staff to reopen the record for written comment.

We propose that staff be directed to mail individual notice to those hearing participants entitled to notice informing them of the LUBA decision and inviting their written comments responsive to Mr. Irish's evidence. We propose an initial written comment period of 7 days followed by a second 7 day period during which anyone can respond to comments received during the first 7 day period. As required by state law, a final 7 day period will be reserved for the applicant to respond.

At the conclusion of this 21 day period, the record will again close and staff will submit all of the material to you along with staff comments and draft findings. At a later meeting (date undetermined) the matter will be before you for a decision.

Budget Impact:

None, except staff time mailing the notice, reviewing new information, and writing findings.

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