



March 5, 2020

6:00 P.M.

Medford City Hall, Medford Room
411 W. 8th Street, Medford, Oregon

10. Roll Call

20. Recognitions, Community Group Reports

20.1 SOU/Small Business Development Center Report

30. Oral Requests and Communications from the Audience

Comments will be limited to 4 minutes per individual, group or organization. PLEASE SIGN IN.

40. Approval or Correction of the Minutes of the February 20, 2020 Regular Meeting

50. Consent Calendar

60. Items Removed from Consent Calendar

70. Ordinances and Resolutions

70.1 COUNCIL BILL 2020-24

An ordinance authorizing execution of a Prescott Park Road Use and Maintenance License Agreement with Burl Brim Excavation, Inc.

80. Public Hearings

Comments are limited to a total of 30 minutes for applicants and/or their representatives. You may request a 5-minute rebuttal time. Appellants and/or their representatives are limited to a total of 30 minutes and if the applicant is not the appellant they will also be allowed a total of 30 minutes. All others will be limited to 4 minutes. PLEASE SIGN IN.

80.1 COUNCIL BILL 2020-25

An ordinance vacating a Public Utility Easement (PUE) and Pedestrian Access and Traffic Signal Easement at 295 E. Barnett Road, within the C-R (Regional Commercial) zoning district. (SV-19-049) Land Use, Quasi-Judicial

80.2 CONTINUED FROM JANUARY 16, 2020

Consider an appeal of a "Notice of Sidewalk Abatement Assessment" regarding the sidewalks at Wolf Run Drive/Highcrest, Oregon – Parcel 371W23CC 2600.

90. Council Business

90.1 Proclamations issued: None

90.2 Committee Reports and Communications

a. Council Officers Update

100. City Manager and Staff Reports

100.1 Highway 62 Jurisdictional Transfer – Cory Crebbin

100.2 Annual Housing Production Report – Matt Brinkley

110. Adjournment



AGENDA ITEM COMMENTARY

DEPARTMENT: Parks, Recreation, Facilities **AGENDA SECTION:** Ordinances and Resolutions
PHONE: (541) 774-2483 **MEETING DATE:** March 5, 2020
STAFF CONTACT: Rich Rosenthal, Director

COUNCIL BILL 2020-24

An ordinance authorizing execution of a Prescott Park Road Use and Maintenance License Agreement with Burl Brim Excavation, Inc.

SUMMARY AND BACKGROUND

Council is requested to consider a new Prescott Park Road Use and Maintenance Agreement with Burl Brim Excavation, Inc.

PREVIOUS COUNCIL ACTIONS

On May 6, 2004, Council Bill 2004-86 was approved, authorizing the execution of a five-year Prescott Park Road Use and Maintenance License Agreement between the City of Medford and Burl Brim Excavation, Inc.

On October 17, 2013, Council Bill 2013-86 was approved, authorizing the execution of a five-year Prescott Park Road Use and Maintenance License Agreement between the City of Medford and Burl Brim Excavation, Inc.

On June 21, 2018, Council Bill 2018-63 was approved, authorizing a two-year Prescott Park Road Use and Maintenance License Agreement with a two-year renewal option between the City of Medford and Burl Brim Excavation, Inc.

ANALYSIS

Burl Brim Excavation, Inc. operates a gravel pit on privately owned property on the slopes of Roxy Ann Peak. The gravel pit is adjacent to Prescott Park, and for the past two decades, the City has provided Brim with a Road Use and Maintenance License for use of three miles of Roxy Ann Road in order to access its operation.

The current License, which was approved in 2018, expires on June 30, 2022, but Department staff have worked with Mr. Brim on the proposed new five-year License through Dec. 31, 2025 because the City's recent paving of the roadway rendered the dust-abatement responsibilities and in-kind obligations in the 2018 agreement moot.

The new agreement retains the time-place-manner rules and conditions for aggregate-truck operations and incorporates the following in-kind value and services to the City:

- Brim to provide equipment and labor to maintain roadway shoulders and drainage systems.
- Brim to provide discounted rock for use in conjunction with the park roads or trails.
- Brim to construct the Equestrian Loop and Ridge Trails identified in the Prescott Park Trails Master Plan.



AGENDA ITEM COMMENTARY

The equestrian trails enhance the park's recreational usefulness and would serve as a fire break and emergency vehicle access road in the event of a wildfire. The three miles of trail development would also save the Department tens of thousands of dollars, as the 2019 cost estimate to install the trail segments was \$276,762.

The Department has gone to great lengths to improve the safety of the road. Two miles of roadway were chip-sealed and striped last July, and the Department recently installed radar-equipped speed signs that also log vehicle traffic counts and speeds. Staff also worked with Medford PD to improve roadway and park signage.

The agreement retains the reasonable time, place and manner conditions on the vehicles accessing the gravel pit, such as hauling hours of operation (7:30 a.m.-5 p.m. on weekdays) and a prohibition of engine braking.

The mixture of aggregate truck traffic on the road in close proximity with park patrons is not ideal, but from a legal standpoint the City cannot prohibit or restrict truck traffic from conducting business at the gravel pit in the absence of other viable routes. Consequently, the development of a mutually agreeable road-use license is of great value to the City.

The Parks and Recreation Commission voted unanimously to recommend Council approval of the new agreement.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

City to receive \$20,000 annually of in-kind materials and services and a discounted rate for $\frac{3}{4}$ minus aggregate base rock. Contractor to provide additional in-kind value in the form of equestrian trail development.

TIMING ISSUES

None.

COUNCIL OPTIONS

Approve the ordinance as presented.
Deny the ordinance and provide direction to staff.

STAFF RECOMMENDATION

Staff recommends approval of the ordinance.

SUGGESTED MOTION

I move to approve the Prescott Park Road Use and Maintenance License agreement with Brim Excavation, Inc.

EXHIBITS

Ordinance
Proposed 2020-25 Prescott Park Road Use and Maintenance License
Equestrian Trail Segment Map

ORDINANCE NO. 2020-24

AN ORDINANCE authorizing execution of a Prescott Park Road Use and Maintenance License Agreement with Burl Brim Excavation, Inc.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. That execution of a Prescott Park Road Use and Maintenance License Agreement with Burl Brim Excavation, Inc., on file in the City Recorder's office, is hereby authorized.

PASSED by the Council and signed by me in authentication of its passage this ____ day of March, 2020.

ATTEST:

City Recorder

Mayor

APPROVED _____, 2020

Mayor

PRESCOTT PARK
ROAD USE AND MAINTENANCE LICENSE AGREEMENT

~~THIS AGREEMENT~~ This Agreement is made this ____ day of _____, 2020 between CITY OF MEDFORD, an Oregon municipal corporation, called "City," and BURL BRIM EXCAVATION, INC., called "Brim."

RECITALS

1. City owns the southwest quarter of the northeast quarter of Section 14 in Township 37 South, Range I West of the Willamette Meridian in Jackson County, Oregon, being a part of Roxy Ann Peak and portrayed on attached Exhibit "A".

~~It was acquired from the United States government on or about November 21, 1930 under the provisions of the Recreation Act of June 14, 1926 (44 Stats. 741) which requires that the lands shall revert to the United States upon a finding by the Secretary of Interior that for five consecutive years such land has not been used by City for park or recreation purposes or that such land, or any part thereof, is being devoted to other use.~~

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2. Brim wishes to use ~~the park road system in Prescott Park~~ Roxy Ann Road within Prescott Park for access to the ~~adjacent neighboring~~ gravel pit that Brim operates under a lease from the property owner. City has determined that such use is in the public interest if Brim participates in road maintenance and conducts operations in a manner that respects the primary use of the land as a park for the enjoyment of recreationists.

3. City in consideration of the obligations undertaken by Brim, grants to Brim or its successor for a term of five years ending December 31, 2025, the right to use ~~the Prescott Park Road~~ Roxy Ann Road system within Prescott Park for access to the gravel pit located on the slopes of Roxy Ann Butte except as further provided in ~~5.h., below~~ Section 5. Either party may terminate this agreement by providing 180 days written notice to the other party, ~~with the exception of circumstances outlined in Section 12. If terminated before June 30, 2023, the obligations shall be pro-rated as of the date of termination. Provided that if the Department of Interior or other authorized agency of the U.S. government, this agreement and all executor rights or duties of the parties hereunder shall terminate. If parties agree to an additional five years, ending June 30, 2023, then this agreement shall be continued under the same terms and conditions herein unless either party initiates, by written request to the other party, a new license agreement.~~

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3.—

4. Definitions: The following definitions are to be taken in the context of ~~the access road~~ the Agreement.

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- a. The Road: The 3.1 miles of Roxy Ann Road within Prescott Park leading to the gravel pit.

a. Annual Road Maintenance: Road maintenance work, including equipment, materials, and labor, necessary to ~~maintain or improve the present~~ bring the condition of the road ~~and its appurtenances~~ back to ~~Its~~ condition following proper annual maintenance in the previous annual cycle. Damage caused by extremely unusual weather, such as a storm exceeding a 50-year expectancy, is excluded.

b.

a. Aggregate Trucks: Trucks used for the hauling of aggregate rock to and from the pit for sale or operations.

c.

a. Operations Traffic: Vehicles used by employees for operations related to the pit, including employee vehicles but excluding aggregate trucks as defined previously.

d.

—Brim and City agree to the following conditions as consideration for this license:

5.

a. Annual Usage Fee. The annual road use fee ~~for ingress/egress of the gravel pit hasis~~ \$20,000, ~~an estimated equivalent value of \$10,000.00, provided as labor and equipment by Brim each year in lieu of a cash payment. Brim shall place up to 1,538 tons of crushed aggregate, conforming to Oregon Department of Transportation specifications for "3/4 minus Base Rock" on the park road system in each of City's fiscal years during this agreement. Placement of all 1,538 tons shall be at the direction of City on any road as needed within Prescott Park, including the City owned road between the gravel pit property line and Hillerest Road. City shall pay Brim \$6.70 per ton for the hauled, placed, graded, and compacted material within 30 days of receipt of invoice from Brim. The difference between market value and City's payment, equal to \$10,000.00, is Brim's "in-kind" payment in lieu of cash as an annual fee. The annual road use fee shall be adjusted once each year on the anniversary date of this agreement by the percentage change (increase or decrease) in the Portland, Oregon, Consumer Price Index published in December of the current year and December of the next subsequent year.~~

b. In-Kind Contribution. In lieu of cash payment for the annual road use fee, Brim to provide the following materials and services:

1. Up to 2,000 tons of crushed aggregate annually, conforming to Oregon Department of Transportation specifications for "3/4-minus Base Rock" at a discounted rate of \$6.90/ton, to be used for Road and Equestrian Trail improvements.
2. Hauling and placing ¾-minus Base Rock along the Road in conjunction with annual maintenance schedule of work, at no cost to the City.
3. Haul, place, grade and compact ¾-minus Base Rock on the Equestrian Loop Trail and Equestrian Ridge Trail, to be coordinated with Parks Department

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staff. Equestrian Trails will be improved to Parks Department standard of 10-foot width and six-inch compacted rock depth in the following section increments as depicted in Exhibits A and B:

- By July 31, 2021: Equestrian Loop Sections EL1-3
- By July 31, 2022: Equestrian Loop Sections EL4-6
- By July 31, 2023: Equestrian Loop Sections EL7-9
- By July 31, 2024: Ridge Trail (southern half)
- By July 31, 2025: Ridge Trail (northern half)

*Pursuant to additional terms agreeable to the City, Brim may choose to accelerate the trail improvement timeline.

c. Maintenance: City and Brim shall jointly inspect the condition of the ~~access r~~Road on an annual basis. Following the inspection, a jointly agreeable Schedule of Work will be established in writing based on the following considerations:

1. City is responsible for maintenance of the chip-sealed Road surface.
2. Brim to provide equipment and labor for maintenance on Road shoulders and Road drainage systems, at its expense, as outlined in the Schedule of Work.

a.d. For the term of the Agreement, the following not-to-exceed limits are the only authorized expenses pursuant to the "Schedule of Work" referenced in Section 5(c):

- Dust abatement applications: \$15,000
- Damage not associated with Brim operations: \$30,000
- Road work requested by City: \$30,000
- ¾-minus Base Rock (at \$6.90/ton) \$30,000

b.e. Each invoice provided by Brim to City shall specify whether the amount to be paid is for the items described in Section 5(d).

~~including annual placement of aforementioned aggregate~~

6. Brim agrees to hold harmless, defend and indemnify City, its officers, employees and agents acting within the scope of their employment or duties, as such, from any liability, loss or damage arising out of or connected with the activities for which this license is issued.

~~—~~ Brim shall comply with all park closures required by city, state or federal agencies and strictly follow applicable conditions when operating under a legal exemption to total shut-down.

7. All aggregate hauling traffic shall occur between the hours of ~~7 a.m.:00 AM~~ and ~~5:00 p.m., PM~~ Monday through Friday. All operations traffic will follow general park use hours as specified in the Administrative Regulation outlining park use. No aggregate hauling operations are permitted on weekends and the following eight days: New Year's Day, Martin Luther King Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day, day after Thanksgiving Day, and Christmas Day. Penalties for ~~is~~violation of aggregate hauling traffic hours and dates listed will result in a \$100 fine for each occurrence that can be documented by the Medford Parks and Recreation Department. Brim will be notified of such penalties via writing. Examples of appropriate proof of violations would be: visual confirmation by ~~park and recreation d~~Department staff, or video and pictures that are date

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stamped. Operations traffic is not subject to the hours and date restrictions listed for aggregate truck traffic. In the event of an emergency, exceptions to hours of operation may be granted by the City.

8.
— Engine brakes (also known as “Jake brakes” a.k.a. Jake brakes) shall not be used within Prescott Park and the City Limits (by City Ordinance) except in an emergency where life or property is threatened. Brim to communicate engine brake and Road speed restrictions to its staff and customers via signage at the gravel pit exit.

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9.
— h. If Brim violates any condition of this agreement the City may, after providing 90 days written notice, terminate this agreement. In that event, Brim shall be required to obtain a court order directing City to grant access to the gravel pit.

10.
— i. By signing this agreement, Brim is not waiving any constitutional rights he or his company has to use the Road.

11.
12. During the life of this Agreement , Brim shall maintain the following:

a. Commercial General Liability Insurance on an “occurrence” policy form covering Bodily Injury and Property Damage, Products/Completed Operations, Personal & Advertising Injury, and blanket Contractual Liability. Such insurance shall be primary and non-contributory, and provide limits of at least \$1,000,000 per Occurrence and a General Aggregate of at least \$2,000,000. “The City of Medford and its officers, employees and agents while acting within the scope of their duties as such” shall be named an Additional Insured by endorsement.

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b. Commercial Automobile Liability Insurance for Bodily Injury and Property Damage covering owned, non-owned, rented, and hired autos. Such insurance shall provide a combined single limit per accident of at least \$1,000,000.

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c. Workers Compensation Insurance meeting statutory requirements of Oregon Workers Compensation Law must be provided by Brim (and any sub-contractor CONTRACTOR may use) for any subject workers, as well as Employers Liability Insurance with limit of at least \$500,000.

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d. If Brim is statutorily exempt from the requirement to provide Workers Compensation Insurance, Brim shall complete, sign, and submit the City’s form for Declaration of Exemption from Oregon Statutory Workers Compensation in lieu of Workers Compensations Insurance.

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e. Brim shall submit to City certificates of insurance for all policies listed above at time of this Agreement, and at each subsequent insurance renewal for the life of this Agreement.

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Certificate must include Additional Insured Endorsement for General Liability Insurance. Certificates of insurance for current coverage or activated tail coverage for Professional Liability Insurance, because it is a claims-made coverage, shall continue to be submitted to City for two (2) years following the effective term of this Agreement. Certificate Holder (and additional insured for General Liability) shall be shown as: City of Medford, 411 West 8th Street, Medford, OR 97501. Any request for exemption from this requirement must be in writing and approved by the CITY'S Risk Manager.

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f. Brim is responsible to assure that City receives a required thirty (30) days written notice prior to cancellation of, material change to, exhaustion of aggregate limits of, or intent not to renew any insurance policy for coverage required in this Agreement. Ten (10) days will be accepted for cancellation due to non-payment of premium. Brim shall itself provide the written notice in the event that its insurance companies will not or do not provide such notice. Failure to maintain proper insurance and/or provide timely notification of a change in coverage is grounds for potential immediate termination of this contract.

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a.g. Notwithstanding insurance requirements stated or any modifications made thereto, in no case shall the presence or absence of any insurance coverage, or any insurance policy limit, provision, term, or condition reduce the obligations of the Brim for liability granted generally by law or specifically in the terms of this Agreement. In no case shall City be responsible for any amount of Brim self-insurance, or any retention, deductible, or coinsurance amount required by Brim's insurance policies.

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~~(1) Commercial General Liability Insurance on an "occurrence" policy form covering Bodily Injury and Property Damage, Products/Completed Operations, Personal & Advertising Injury, and blanket Contractual Liability. Such insurance shall be primary and non-contributory, and provide limits of at least \$1,000,000 per Occurrence and a General Aggregate of at least \$2,000,000. "The City of Medford and its officers, employees and agents while acting within the scope of their duties as such" shall be named an Additional Insured by endorsement.~~

~~Commercial Automobile Liability Insurance for Bodily Injury and Property Damage covering owned, non-owned, rented, and hired autos. Such insurance shall provide a combined single limit per accident of at least \$1,000,000.~~

~~Workers Compensation Insurance meeting statutory requirements of Oregon Workers Compensation Law must be provided by CONTRACTOR (and any sub-contractor CONTRACTOR may use) for any subject workers, as well as Employers Liability Insurance with limit of at least \$500,000.~~

If CONTRACTOR is statutorily exempt from the requirement to provide Workers Compensation Insurance, CONTRACTOR shall complete, sign, and submit the City's form for Declaration of Exemption from Oregon Statutory Workers Compensation in lieu of Workers Compensations Insurance.

CONTRACTOR shall submit to CLIENT certificates of insurance for all policies listed above at time of this Agreement, and at each subsequent insurance renewal for the life of this Agreement. Certificate must include Additional Insured Endorsement for General Liability Insurance. Certificates of insurance for current coverage or activated tail coverage for Professional Liability Insurance, because it is a claims-made coverage, shall continue to be submitted to CLIENT for two (2) years following the effective term of this Agreement. Certificate Holder (and additional insured for General Liability) shall be shown as: City of Medford, 411 West 8th Street, Medford, OR 97501. Any request for exemption from this requirement must be in writing and approved by the CLIENT'S Risk Manager.

CONTRACTOR is responsible to assure that CLIENT receives a required thirty (30) days written notice prior to cancellation of, material change to, exhaustion of aggregate limits of, or intent not to renew any insurance policy for coverage required in this Agreement. Ten (10) days will be accepted for cancellation due to non-payment of premium. CONTRACTOR shall itself provide the written notice in the event that its insurance companies will not or do not provide such notice. Failure to maintain proper insurance and/or provide timely notification of a change in coverage is grounds for potential immediate termination of this contract.

Notwithstanding insurance requirements stated or any modifications made thereto, in no case shall the presence or absence of any insurance coverage, or any insurance policy limit, provision, term, or condition reduce the obligations of the CONTRACTOR for liability granted generally by law or specifically in the terms of this Agreement. In no case shall CLIENT be responsible for any amount of CONTRACTOR self insurance, or any retention, deductible, or coinsurance amount required by CONTRACTOR's insurance policies.

Agree to hold harmless, defend and indemnify City, its officers, employees and agents acting within the scope of their employment or duties, as such, from any liability, loss or damage arising out of or connected with the activities for which this license is issued.

13. No assignment of any rights hereunder shall be valid without the advance written consent of City.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CONTRACTOR:

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BURL BRIM EQUIPMENT LEASING, INC. CITY OF MEDFORD

DBA BRIM AVIATION

By: _____ By: _____

<u>Burl Brim, Pres.</u>	<u>Gary H. Wheeler</u>
<u>P.O. Box 3009</u>	<u>c/o City Manager</u>
<u>Ashland, OR 97520</u>	<u>411 W. 8th Street</u>
<u>Tax ID# 93-1108962</u>	<u>Medford, OR 97501</u>

Approved as to form:

City Attorney

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CONTRACTOR:

BURL BRIM EQUIPMENT LEASING, INC. ————— CITY OF MEDFORD
DBA BRIM AVIATION

By: _____ By: _____

By: _____

————— Burl Brim, Pres. ————— Gary H. Wheeler

————— P.O. Box 3009 ————— e/o City Manager

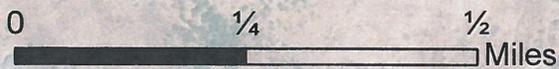
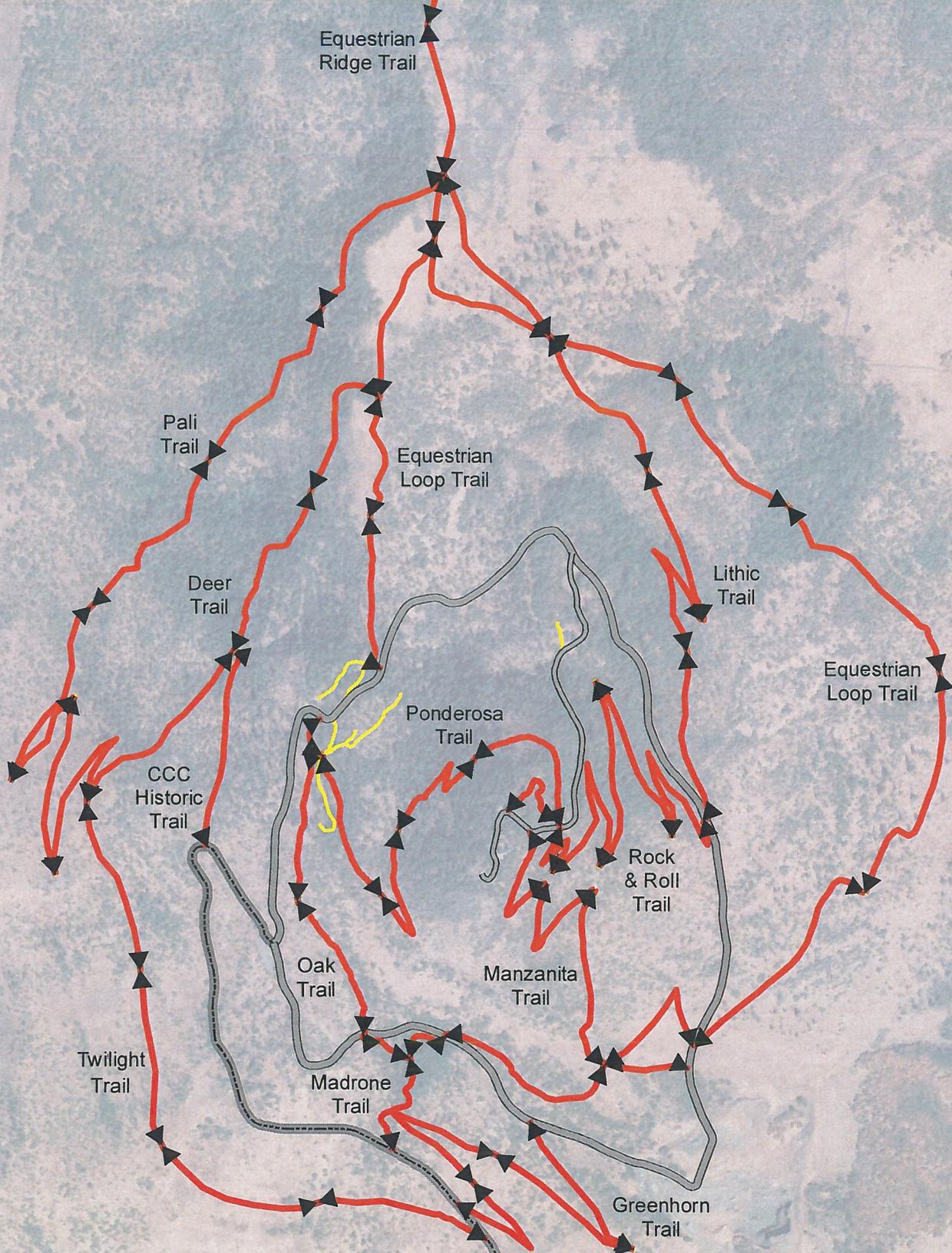
————— Ashland, OR 97520 ————— 411 W. 8th Street

————— Tax ID# 93-1108962 ————— Medford, OR 97501

Approved as to form:

City Attorney

Prescott Trail Map Segment Overview





AGENDA ITEM COMMENTARY

DEPARTMENT: Planning
PHONE: (541) 774-2380
STAFF CONTACT: Matt Brinkley, AICP, CFM, Planning Director

AGENDA SECTION: Public Hearings
MEETING DATE: March 5, 2020

COUNCIL BILL 2020-25

An ordinance vacating a Public Utility Easement (PUE) and Pedestrian Access and Traffic Signal Easement at 295 E. Barnett Road, within the C-R (Regional Commercial) zoning district. (SV-19-049)

SUMMARY AND BACKGROUND

Council is requested to consider the vacation of a Public Utility Easement (PUE) and Pedestrian Access and Traffic Signal Easement at 295 E. Barnett Road, within the C-R (Regional Commercial) zoning district. (File No. SV-19-049)

PREVIOUS COUNCIL ACTIONS

On January 16, 2020, City Council approved Council Bill 2020-05 establishing the public hearing date of March 5, 2020, for consideration of the matter.

ANALYSIS

The easements to be vacated are located at 295 E. Barnett Road. On August 2, 2019, the Site Plan & Architectural Commission (SPAC) approved a site plan for the construction of an approximate 4,500 square foot restaurant with drive-thru. This approval required a portion of the Pedestrian Access and Traffic Signal easement to be vacated prior to vertical construction to accommodate the placement of the building.

The Pedestrian Access and Traffic Signal easement was a result of the Transportation Facility project TF-98-038 which was for the new signalized driveway entrance at the then K-Mart store. The easement was granted by recorded document 01-02350 for the purpose of constructing and maintaining a pedestrian access and traffic signal facility.

The Public Utility Easement was granted by recorded document 76-07160 for the purpose of construction, installation and maintenance of utilities.

The vacation of a portion of the Pedestrian Access and Traffic Signal easement is to accommodate the relocation of the McDonald's restaurant. The Pedestrian Access and Traffic Signal easement currently extends beyond the existing pedestrian sidewalk that is located along the southern portion of the subject property. Staff, along with SPAC, found that the portion of easement to be vacated is not needed to provide pedestrian access to and from the site as the area to be vacated is within existing landscaping.

The vacation process for public easements is not required per Oregon Revised Statute (ORS) Chapter 271; however, Section 10.228 of the Medford Land Development Code (MLDC) does state that a request to vacate an "easement" be subject to the vacation provisions of the Code, which the City's



AGENDA ITEM COMMENTARY

legal counsel has interpreted as requiring that their removal be recorded into the public record in accordance with ORS procedures.

MLDC Section 10.112 requires that all affected agencies to be notified of the comment period of this vacation request.

On February 13, 2020, the Planning Commission considered the subject request and forwarded a favorable recommendation to Council.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

None.

TIMING ISSUES

The McDonald's project was approved by the Site Plan & Architectural Commission on August 2, 2019. The vacation is required to be completed prior to issuance of building permits.

COUNCIL OPTIONS

- Approve the resolution as presented.
- Modify the resolution as presented.
- Deny the resolution as presented and direct staff regarding further action.

STAFF RECOMMENDATION

Staff recommends approval of the vacations.

SUGGESTED MOTION

I move to approve the ordinance authorizing the vacation a Public Utility Easement (PUE) and Pedestrian Access and Traffic Signal Easement at 295 E. Barnett Road, as recommended by the Planning Commission.

EXHIBITS

- Ordinance
- City Council Report, including Exhibits A through J
- Vicinity Map

ORDINANCE NO. 2020-25

AN ORDINANCE vacating a Public Utility Easement (PUE) and Pedestrian Access and Traffic Signal Easement at 295 E. Barnett Road, within the C-R (Regional Commercial) zoning district. (SV-19-049)

WHEREAS, the City Council of the City of Medford, Oregon, by Resolution No. 2020-05, accepted the petition initiating the vacation; and

WHEREAS, the City Council fixed 6:00 p.m. on March 5, 2020, in the Medford City Council Chambers, 411 W. 8th St., Medford, Oregon, as the time and place for hearing any objections to the proposed vacation of said area; and

WHEREAS, the City Recorder has given notice of the time and place for said hearing as required by law; and

WHEREAS, at the time and place set for hearing the City Council heard all objections to the proposed vacation; and

WHEREAS, on the basis of the facts and conclusions stated in the Staff Report dated February 20, 2020 on file in the Planning Department, the City Council has deemed it to be in the public interest that said area be vacated; now, therefore,

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. That a Public Utility Easement (PUE) and Pedestrian Access and Traffic Signal Easement at 295 E. Barnett Road, within the C-R (Regional Commercial) zoning district, described in Exhibit A, attached hereto and incorporated herein, is hereby vacated, and the ownership of the said area hereby vacated shall become vested as provided by law.

Section 2. The Council finds and determines that written objections were not received from the owners of a majority of the area affected by the vacation.

Section 3. The Council finds and determines that the vacation of said area in the City of Medford is in the public interest and does not damage or cause a deterioration of the market value of any real property of non-consenting owners (if any) abutting the same or any portion thereof and that no damage on account thereof shall be allowed.



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 | www.aks-eng.com

AKS Job #5722-06

OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT A

Pedestrian Access and Traffic Signal Easement Vacation

A tract of land located in the Northeast One-Quarter of Section 31, Township 37 South, Range 1 West, Willamette Meridian, City of Medford, Jackson County, Oregon, and being more particularly described as follows:

Commencing at the southeast corner of Donation Land Claim No. 44; thence North 01°27'41" East 1039.50 feet along the east line of Donation Land Claim No. 44 to the original centerline of East Barnett Road, from which the northeast corner of Donation Land Claim No. 50 bears North 01°27'41" East 952.82 feet; thence, along said centerline, North 88°23'19" West 437.29 feet; thence, leaving said centerline, North 01°54'24" West 52.10 feet, to the northerly right-of-way of East Barnett Road (52.00 feet from centerline) and the southerly southeast corner of the tract per Instrument Number 2018-16111, Deed Records of Jackson County, Oregon; thence North 88°23'19" West 255.35 feet to the southwest corner of said tract; thence, along the west line of said tract, North 17°22'40" West 15.87 feet to the Point of Beginning; thence, continuing along said west line, North 17°22'40" West 1.04 feet; thence, leaving said west line, South 88°20'13" East 105.80 feet; thence North 01°39'47" East 4.00 feet; thence South 88°20'13" East 33.45 feet; thence South 01°36'41" West 4.86 feet; thence North 88°23'19" West 138.91 feet to the Point of Beginning.

The above described tract of land contains 262 square feet, more or less.

12/4/2019



Nick White

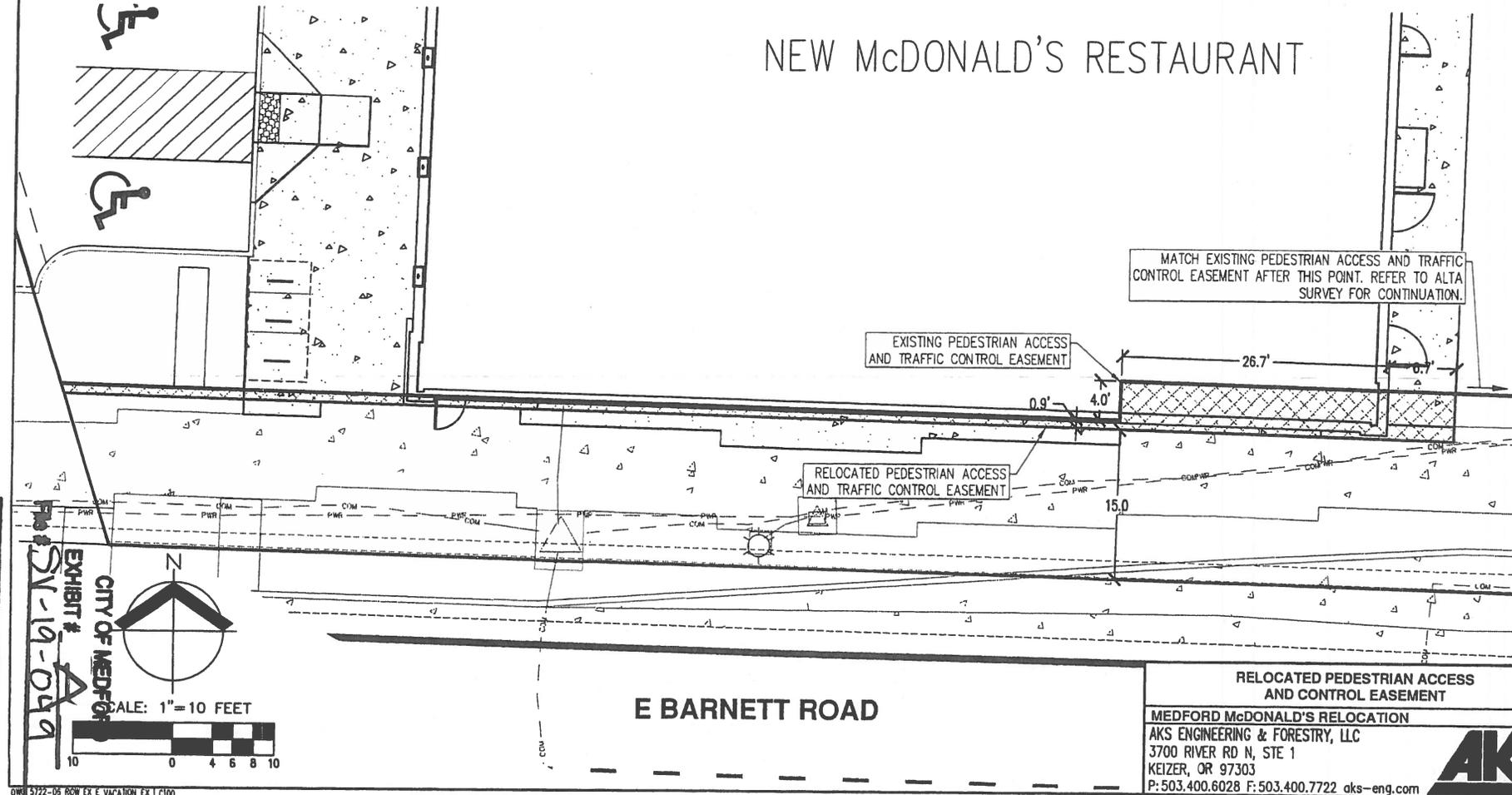


RENEWS: 6/30/20

LEGEND

-  AREA OF PEDESTRIAN ACCESS EASEMENT TO BE VACATED
TOTAL AREA = ±265 SF
-  PROPOSED/NEW SIDEWALK
-  EXISTING SIDEWALK

NEW McDONALD'S RESTAURANT



MATCH EXISTING PEDESTRIAN ACCESS AND TRAFFIC CONTROL EASEMENT AFTER THIS POINT. REFER TO ALTA SURVEY FOR CONTINUATION.

EXISTING PEDESTRIAN ACCESS AND TRAFFIC CONTROL EASEMENT

RELOCATED PEDESTRIAN ACCESS AND TRAFFIC CONTROL EASEMENT

E BARNETT ROAD

DATE: 10/29/2019

RELOCATED PEDESTRIAN ACCESS AND CONTROL EASEMENT

EXHIBIT

MEDFORD McDONALD'S RELOCATION

E

AKS ENGINEERING & FORESTRY, LLC
3700 RIVER RD N, STE 1
KEIZER, OR 97303

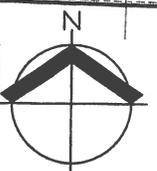
DRWN: TDR
CHKD: ZP
AKS JOB:

P: 503.400.6028 F: 503.400.7722 aks-eng.com



5722-06

EXHIBIT #
SI-19-049
CITY OF MEDFORD



SCALE: 1"=10 FEET





CITY COUNCIL REPORT

for a Type-IV legislative decision: Vacation

Project McDonald's Vacation
Applicant: McDonald's USA LLC; Agent: AKS Engineering & Forestry LLC

File no. SV-19-049

To Mayor & City Council *for March 5, 2020 hearing*

From Liz Conner, Planner II

Reviewer Kelly Evans, Assistant Planning Director

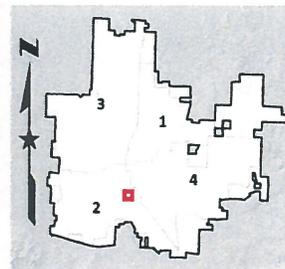
Date February 20, 2020

BACKGROUND

Proposal

Consideration of a request for the vacation of a Public Utility Easement (PUE) and a Pedestrian Access and Traffic Signal Easement at 295 E. Barnett Road, within the C-R (Regional Commercial) zoning district.

Vicinity Map



Subject Site Characteristics

GLUP	CM	Commercial
Zoning	C-R	Regional Commercial
Use	Winco Shopping Center	

Surrounding Site Characteristics

North Zone: C-H (Heavy Commercial)
 Use: Various commercial suites

South Zone: C-R
 Use: Motel and used furniture store

East Zone: C-R
 Use: Fast food restaurant

West Zone: C-R
 Use: Fast food restaurant

Related Projects

PA-18-082 McDonald's Pre-Application
AC-19-047 McDonald's Relocation

Applicable Criteria

Medford Municipal Code §10.228(D) – Vacation of Public Right-of-Way Approval Criteria

A request to vacate shall only be approved by City Council when the following criteria have been met:

(1) Compliance with the Public Facilities Element of the Comprehensive Plan, including the Transportation System Plan.

(2) If initiated by petition under ORS 271,080, the findings required by ORS 271.120.

(3) If initiated by the Council, the applicable criteria found in ORS 271.130.

Authority

This proposal is a Type IV application for vacation of public utility easement and pedestrian access and traffic control easement. The Planning Commission is authorized to act as the advisory agency to the City Council for vacations, providing a

recommendation to the City Council, and with the City Council serving as the approving authority.

Corporate Names

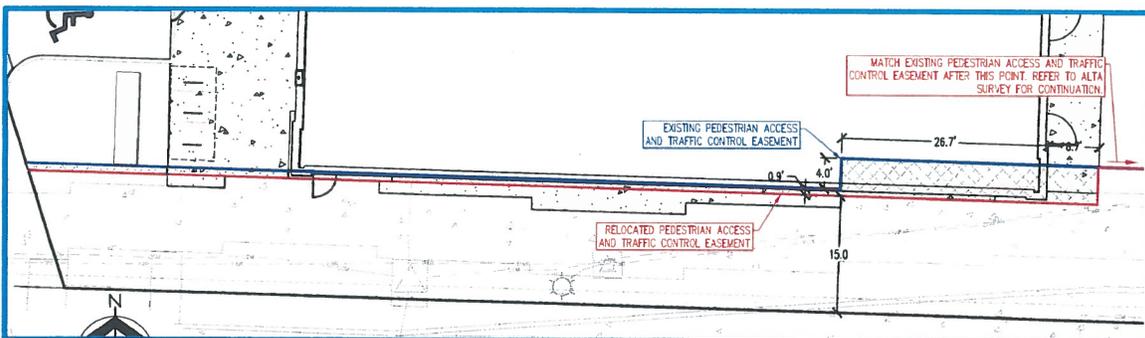
The application lists PAPF Medford LLC as the owner of the subject property. As per the State of Oregon Business Registry, CT Corporation System is the registered agent. McDonald's USA, LLC is the listed applicant, as per the State of Oregon Business Registry, Corporation Service Company is the registered agent. Gene Hill is a McDonald's franchise owner in Southern Oregon.

ISSUES AND ANALYSIS

Background

The applicant has two separate requests, one that complies with the conditions of approval to vacate prior to construction and the other to vacate the public utility easement. The proposal is located within a single tax lot near the intersection of South Riverside Avenue and East Barnett Road in the Winco plaza.

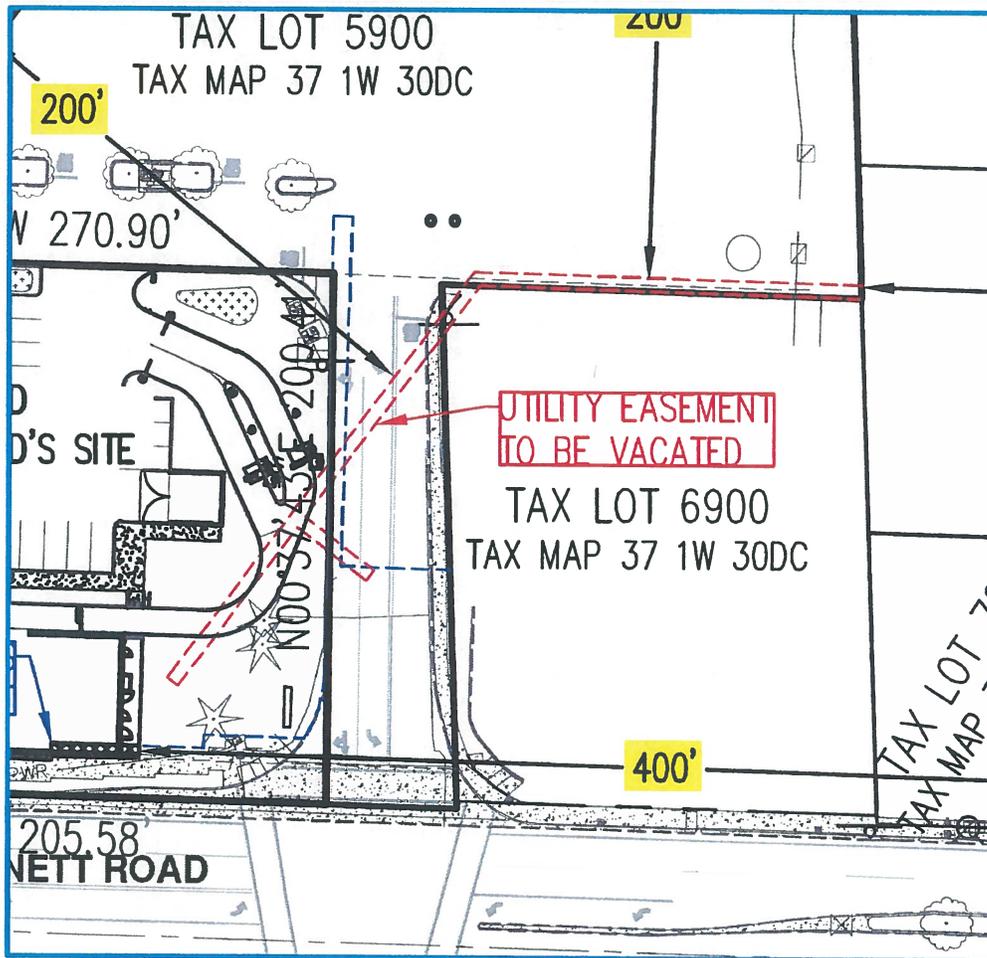
The easements to be vacated are located at 295 E. Barnett Road, the former site of U.S. Bank. On August 2, 2019, the Site Plan & Architectural Commission (SPAC) approved a site plan for the construction of an approximate 4,500 square foot restaurant with drive-thru. This approval required a portion of the Pedestrian Access and Traffic Signal easement to be vacated prior to vertical construction to accommodate the placement of the building. There were no conditions of approval to vacate the Public Utility Easement prior to construction.



The Pedestrian Access and Traffic Signal easement was granted by recorded document 01-02350 for the purpose of constructing and maintaining a pedestrian access and traffic signal facility. The image above depicts the Pedestrian Access and Traffic Signal easement; the cross hatched area is the area requested to be vacated.

The Pedestrian Access and Traffic Signal easement currently extends beyond the existing pedestrian sidewalk that is located along the southern portion of the subject property. Staff, along with SPAC, found that the portion of easement to be vacated is not needed to provide pedestrian access to and from the site as the area to be vacated is within existing landscaping.

The Public Utility Easement was granted by recorded document 76-07160 for the purpose of construction, installation and maintenance of utilities.



Agency Comments

Per the agency comments submitted to staff (Exhibits G-J), it can be found that the public facilities will not be impacted by the proposed vacation.

Committee Comments

No comments were received from a committee, such as BPAC.

No other issues were identified by staff.

FINDINGS AND CONCLUSIONS

Staff has reviewed the applicant's findings and conclusions (Exhibit A) and recommends the Commission adopt the findings as presented.

RECOMMENDED ACTION

The Planning Commission recommends adopting SV-19-049 based on the analysis, findings and conclusions per the City Council Report dated February 20, 2020, including Exhibits A through J.

EXHIBITS

- A Applicant's Request to Initiate and Findings of Facts received November 4, 2019
- B Boundary Map
- C Pedestrian Access and Traffic Signal Easement recorded September 28, 2000
- D Pedestrian Access and Traffic Signal Easement area to be vacated
 - a. Site drawing
 - b. Legal description of area to be vacated
 - c. Map of easement vacation
- E Public Utility Easement map
- F Public Utility Easement recorded May 6, 1976
- G Public Works Report dated January 22, 2020
- H Medford Fire Department report dated January 22, 2020
- I Medford Building Department Memo dated January 21, 2020
- J Medford Water Commission Memo dated January 22, 2020
Vicinity map

CITY COUNCIL AGENDA:

MARCH 5, 2020

October 30, 2019
City Council
City of Medford
200 South Ivy Street
Medford, OR 97501



NOV 04 2019
PLANNING DEPT

RE: Request to Initiate the Vacation of Public Easements

Honorable Mayor Wheeler and members of the City Council,

With this letter, we respectfully request that the City Council initiate the vacation of two separate easements, as shown on Exhibit A, to accommodate a new restaurant that was recently approved in Planning File AC-19-047. The vacation of these easements, which are described in more detail below, will have no impact to the public now or in the future. We are seeking the Council's assistance as we have been unable to contact the "affected property owners" as that phrase is defined in ORS 271.130 and as such easement vacations are a necessary condition of our land use approval.

Background. McDonald's Corporation (Applicant) received site plan approval to construct a new, approximately 4,500 square foot, restaurant at the south end of Tax Lot 5900 (Jackson County Assessor's Map 37 1W 30DC) earlier this year. The applicable zoning regulations affecting the subject site establish a maximum setback of 20-feet between the front property line and the new building. An existing Pedestrian Access and Traffic Signal Easement partially occupies this maximum front setback area. To meet the applicable setback requirements, the Applicant has agreed to modify the easement boundary and has verified that no utilities are present nor will the modified boundary impede pedestrian access (see Exhibit E).

A second easement, 5-feet in width, is located at the interior of the subject site, and crosses onto the easterly shared driveway and parking area of Tax Lot 5900 and then onto a small portion of the neighboring Tax Lot 6900. This easement was established as a non-exclusive public utility easement in 1976 for the benefit of the Citizens Savings and Loan Association. A copy of the current easement is attached hereto as Exhibit G and incorporated herein by this reference. While the extent of the public benefit accruing through this easement is unclear, at the advice of City staff the vacation of this easement is included with this request as well.

Process. The City of Medford requires that a new Pedestrian Access and Traffic Signal easement will be in place/recorded prior to the vacation of the current easement. A legal description and map illustrating the proposed replacement easement is included in Exhibit E.

Per Medford Land Development Code (MLDC) Section 10.228(D), the City's decision to approve an easement vacation is based on the following:

- (1) The requested vacation complies with the Public Facilities Element of the Comprehensive Plan, including the Transportation System Plan, and
- (3) If initiated by Council, that the request meets the applicable criteria in ORS 271.130.

The criteria in ORS 271.130 are largely reflected in the additional local approval criteria in MLDC Section 10.228(E)(6)3., which provides for notice to affected property owners and an opportunity for said property owners to object to the proposed vacation.

Findings. As illustrated in the attached exhibits, the requested easement vacations comply with all applicable criteria.

Per MLDC 10.228(D), the requested vacations comply with the Comprehensive Plan and Transportation System Plan as:

1. The modification to the boundary of the Pedestrian Access and Traffic Signal easement does not impact any existing or planned traffic signal equipment or facilities nor does the planned easement modification impede pedestrian access in the E Barnett Road corridor.
2. The Applicant has confirmed via survey research and through discussions with City staff that the internal public utility easement does not host any public utility facilities. Further, this easement does not establish a right to the public but rather to a single private property. The elimination of this easement therefore will not impact the installation of any planned City utilities or transportation system improvements.

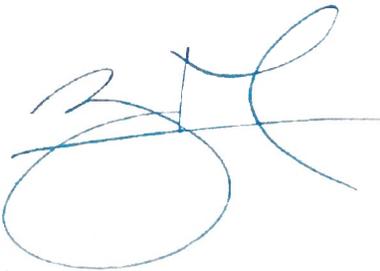
The applicable criteria in MLDC 10.228(E) and ORS 271.130 can be satisfied following the successful completion of providing notice to, and the opportunity for affected property owners to comment on this request. A list of affected property owners, and associated mailing labels, are included in Exhibit F.

Conclusion. As provided here and in the corresponding attachments, this request satisfies all applicable local and state requirements for the City to initiate and ultimately approve the vacation of two easements located on the subject site. For this reason, we respectfully request that the City Council direct staff to:

1. Record the planned Pedestrian Access and Traffic Signal Easement included in Exhibit E;
2. Authorize staff to process the vacation of the existing Pedestrian Access and Traffic Signal Easement as shown in Exhibit D; and,
3. Authorize staff to process the vacation of the existing 5-foot wide public utility easement shown in Exhibit G.

Thank you for your consideration in this matter. Please do not hesitate to contact me with any questions regarding this request.

Sincerely,



AKS ENGINEERING & FORESTRY, LLC

Zach Pelz, AICP

3700 River Road N, Suite 1

Keizer, OR 97303

503-400-6028 | PelzZ@aks-eng.com

"A"

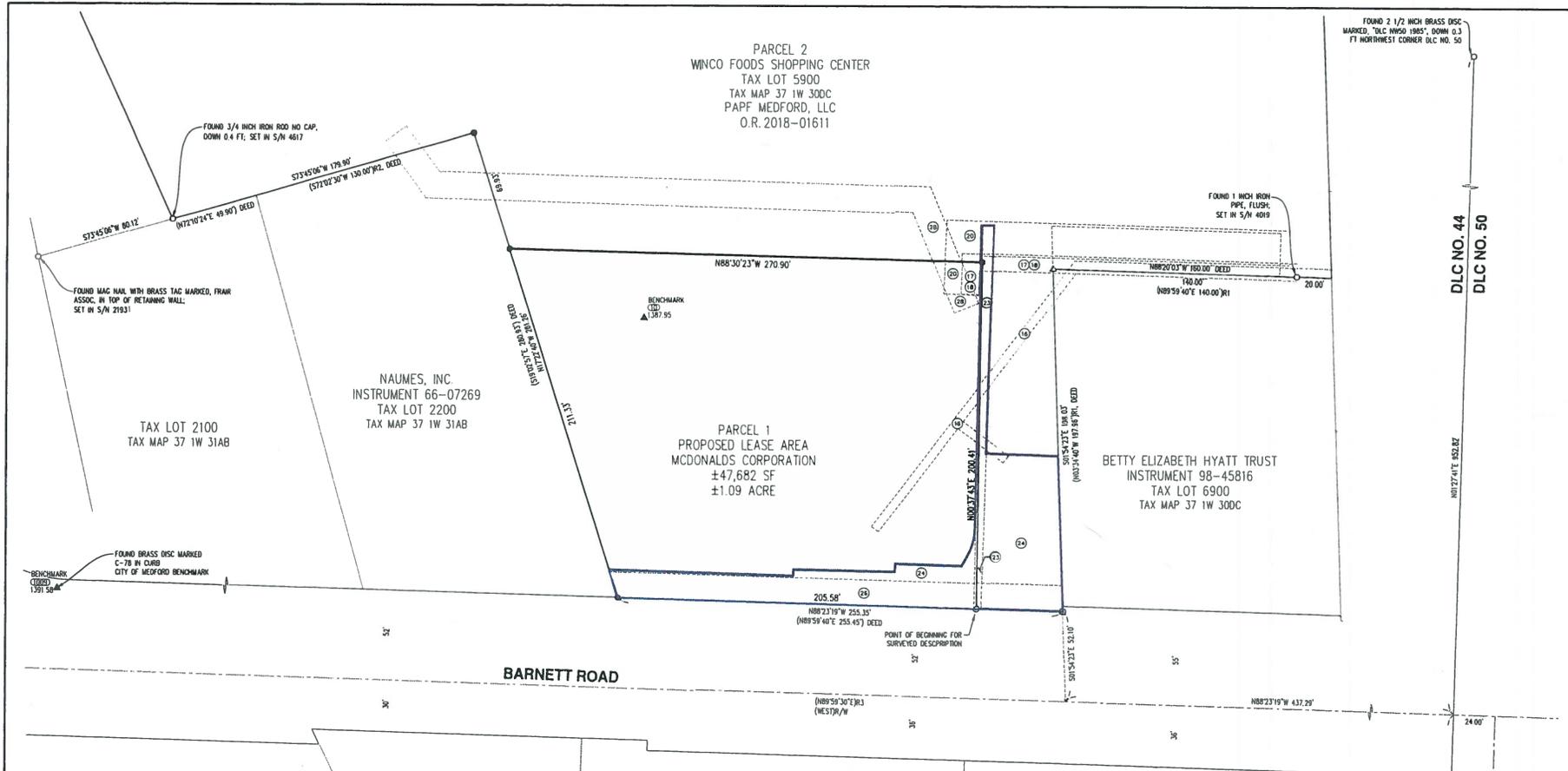


Attachments:

- City of Medford Type IV Vacation Application Form
- Vacation application fee
- Exhibit A – ALTA Survey
- Exhibit B – City of Medford Public Works Staff Report
- Exhibit C – City of Medford Notice of Decision (AC-19-047)
- Exhibit D – Existing Pedestrian Access and Traffic Signal Easement (TO BE VACATED)
- Exhibit E – Proposed Pedestrian Access and Traffic Signal Easement (TO BE RECORDED)
- Exhibit F – Affected Properties Map per ORS 271.080(2)
- Exhibit G – Existing Public Utility Easement (TO BE VACATED)

"A"





EXCEPTIONS

THE FOLLOWING ITEMS WERE LISTED IN PRELIMINARY TITLE REPORT 470317056578, AND ARE LISTED BY THE SAO REPORT NUMBER HERE, WITH OUR COMMENTS IN BOLD:

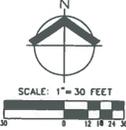
16. AN EASEMENT CREATED BY INSTRUMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, FOR: PUBLIC UTILITIES
 RECORDED: MAY 6, 1976
 INSTRUMENT NO.: 76-07160 IN JACKSON COUNTY, OREGON
 -AFFECTS PARCELS 1&2
17. EASEMENT AGREEMENT REGARDING WATER LINE, SANITARY SEWER AND UNDERGROUND CULVERT, INCLUDING THE TERMS AND PROVISIONS THEREOF.
 RECORDED: JULY 29, 1977
 INSTRUMENT NO.: 77-15425 RECORDS OF JACKSON COUNTY, OREGON.
 -AFFECTS PARCEL 2
18. AN EASEMENT CREATED BY INSTRUMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, IN FAVOR OF: PACIFIC POWER AND LIGHT COMPANY ELECTRICAL AND COMMUNICATION FACILITIES
 RECORDED: JULY 29, 1977
 INSTRUMENT NO.: 77-15426 IN JACKSON COUNTY, OREGON.
 -AFFECTS PARCEL 2
19. AN EASEMENT CREATED BY INSTRUMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, IN FAVOR OF: PACIFIC POWER AND LIGHT COMPANY ELECTRICAL AND COMMUNICATION FACILITIES
 RECORDED: OCTOBER 18, 1999
 INSTRUMENT NO.: 99-52022 IN JACKSON COUNTY, OREGON.
 -AFFECTS PARCELS 1&2
23. AN EASEMENT CREATED BY INSTRUMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, IN FAVOR OF: CITY OF MEDFORD PUBLIC ACCESS
 RECORDED: JANUARY 19, 2001
 INSTRUMENT NO.: 01-02149 IN JACKSON COUNTY, OREGON.
24. AN EASEMENT CREATED BY INSTRUMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, IN FAVOR OF: CITY OF MEDFORD PEDESTRIAN ACCESS AND TRAFFIC SIGNAL
 RECORDED: JANUARY 19, 2001
 INSTRUMENT NO.: 01-02150 IN JACKSON COUNTY, OREGON.
25. AN EASEMENT CREATED BY INSTRUMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, IN FAVOR OF: PUBLIC UTILITIES
 RECORDED: MARCH 27, 2001
 INSTRUMENT NO.: 01-11768 IN JACKSON COUNTY, OREGON.
28. AN EASEMENT CREATED BY INSTRUMENT, INCLUDING THE TERMS AND PROVISIONS THEREOF, IN FAVOR OF: PACIFIC POWER AND LIGHT COMPANY ELECTRICAL AND COMMUNICATION FACILITIES
 RECORDED: MAY 3, 2002
 INSTRUMENT NO.: 02-24787 IN JACKSON COUNTY, OREGON.

LEGEND

- SET 5/8" x 30" IRON ROD W/IPC INSCRIBED "AKS ENGR"
- SET 30MM COPPER DISC IN CONCRETE INSCRIBED "AKS ENGR"
- BEARS FOUND MONUMENT AS NOTED; HELD UNLESS NOTED OTHERWISE
- △ CALCULATED POINT; NOTHING FOUND OR SET
- O.R. OFFICIAL RECORDS JACKSON COUNTY RECORDER
- IP IRON PIPE
- IR IRON ROD
- W/IPC WITH A RED PLASTIC CAP
- W/IPC WITH A YELLOW PLASTIC CAP
- S/N SURVEY NUMBER PER JACKSON COUNTY SURVEY RECORDS
- PUE PUBLIC UTILITY EASEMENT
- ROW RIGHT-OF-WAY
- SF SQUARE FEET

REFERENCES

- (R1) RECORD INFORMATION PER S/N 4019
- (R2) RECORD INFORMATION PER S/N 2230
- (R3) RECORD INFORMATION PER S/N 21732
- (R4) RECORD INFORMATION PER S/N 21931
- (DEED) RECORD INFORMATION PER O.R. 2018-1611
- (S/N) RECORD INFORMATION PER DEED VOLUME 171, PAGE 233



**ALTA/NSPS
TITLE LAND SURVEY**
OREGON
MEDFORD
JACKSON COUNTY TAX MAP 37 1W 31AB

**BOUNDARY MAP
AND
EASEMENT EXCEPTIONS**

DESIGNED BY: _____
 DRAWN BY: BIC
 CHECKED BY: KLT
 SCALE: AS NOTED
 DATE: 1/23/2019
 REGISTERED PROFESSIONAL LAND SURVEYOR
 N. H. H. H.
 OREGON
 JANUARY 8, 2007
 ROCK WHITE
 7055215
 REISSUE: 07/17/20
 RESIGNS: _____
 JOB NUMBER: 5722-06
 SHEET: 03

FOR ASSESSMENT AND
 TAXATION ONLY



CANCELLED TAX
 LOT NUMBERS:

- 4100
- 4401 ADDED TO 4900
- 5000
- 5100
- 5200
- 5300
- 5800A1
- 6500 REMAPPED TO 371 W31AB
- 6500
- 6700 REMAPPED TO 371 W31AB
- 6800 REMAPPED TO 371 W31AB
- 7101
- 8902

B'n

GIS DATA
 08/15/2017 7:56:05 AM - lthompasam

RECEIVED

NOV 04 2019

PLANNING DEPT

PEDESTRIAN ACCESS AND TRAFFIC SIGNAL EASEMENT

KNOW ALL MEN BY THESE PRESENTS that,

JOSEPH ADES,

as "Grantor"/owner of the real property described herein, does here grant to the City of Medford, a municipal corporation of the State of Oregon, as "Grantee" a perpetual easement for public access and traffic signal equipment over and across that property more fully described in attached Exhibit "A" made a part hereof, subject to the terms and conditions set forth below.

Said easement is for the purpose of enabling Grantee to construct, reconstruct, maintain, use, operate and repair, at Grantee's cost and expense a pedestrian access and traffic signal facilities of the Grantee, together with the right to make such excavation of other work as Grantee may require and deem convenient for the installation, repair and maintenance thereof, including such reasonable right of ingress and egress to and from such easement as may be necessary to carry out its purposes so long as Grantee repairs all damage caused by such ingress or egress.

Grantor reserves the right to use and possess such land within the easement including, without limitation, such portion of the easement as may be required to install, replace, maintain or upgrade any subsurface or overhead utility lines or easements serving Grantor's property or to enable Grantor, at its option, to landscape and maintain that portion of the easement which adjoins Grantor's property, provided that any such use or possession shall not interfere with Grantee's use thereof for the purposes above set forth. Grantor shall not cause any buildings to be constructed over any part of the easement without Grantee's consent.

This easement is made this day 28 of SEPTEMBER, 2000.

By [Signature]

ESTATE OF Joseph Ades

MICHAEL M. ADES, EXECUTOR

After recording, return to: Gordon Davis
1035 NW Hoyt Street
Portland, Oregon 97209

CITY OF MEDFORD
EXHIBIT # C
File # SV-19-049

^{New York}
STATE OF ~~OREGON~~
COUNTY OF JACKSON ^{New York}

This instrument was acknowledged before me this day Sept. 28, 2000
by Joseph Ades as his voluntary act and deed.

Joan Mercante
Notary Public for Oregon ^{New York}
My commission expires

JOAN MERCANTE
Notary Public, State of New York
No. 01ME5072129
Qualified in Queens County
Certificate Filed in New York County
Commission Expires January 27, 2001



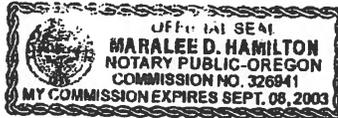
ACCEPTED:

CITY OF MEDFORD

By: Robert Deuel Date 1/18/01
City Engineer Date

Personally appeared the above named Robert Deuel and acknowledged the
foregoing instrument to be his voluntary act and deed on behalf of the City of Medford.

Maralee D. Hamilton
Notary Public for Oregon
My commission expires



2

"C"

EXHIBIT A

(AREA F)

Commencing at the Northwest corner of Donation Land Claim No. 50 in Township 37 South, Range 1 West, Willamette Meridian, Jackson County, Oregon; thence WEST 437.54 feet; thence SOUTH 900.49 feet to the most Southerly, Southeast corner of that tract described in Document No. 72-04061, Official Records of said Jackson County for the **POINT OF BEGINNING**; thence North 03°34'50" West (Record North 03°34'40" West), along the Easterly line of said tract, 90.18 feet; thence, leaving said Easterly line, South 89°59'30" West 41.27 feet; thence North 00°00'30" West 131.91 feet; thence South 89°20'17" West 7.02 feet; thence South 00°39'43" East 172.31 feet; thence, along the arc of a 45.00 foot radius non-tangent curve to the right (the long chord to which bears South 15°58'36" West 25.77 feet), an arc distance of 26.14 feet; thence South 89°59'30" West 38.14 feet; thence South 00°00'30" East 5.00 feet; thence South 89°59'30" West 57.89 feet; thence South 00°00'30" East 4.00 feet; thence South 89°59'30" West 105.81 feet to the Westerly line of said tract; thence South 19°03'10" East, along said Westerly line, 16.67 feet to the Northerly right-of-way line of Barnett Road; thence North 89°59'30" East, along said Northerly line, 255.45 feet to the Point of Beginning.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

David M. Minneci

OREGON
JULY 26, 1988
DAVID M. MINNECI
2349

David M. Minneci
L.S. 2349 - Oregon
Expires 12-31-00
Hoffbuhr and Associates, Inc.

Ades -PAE-II 5900
00-018
February 8, 2000
(adesPAE.doc)

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

JAN 19 2001

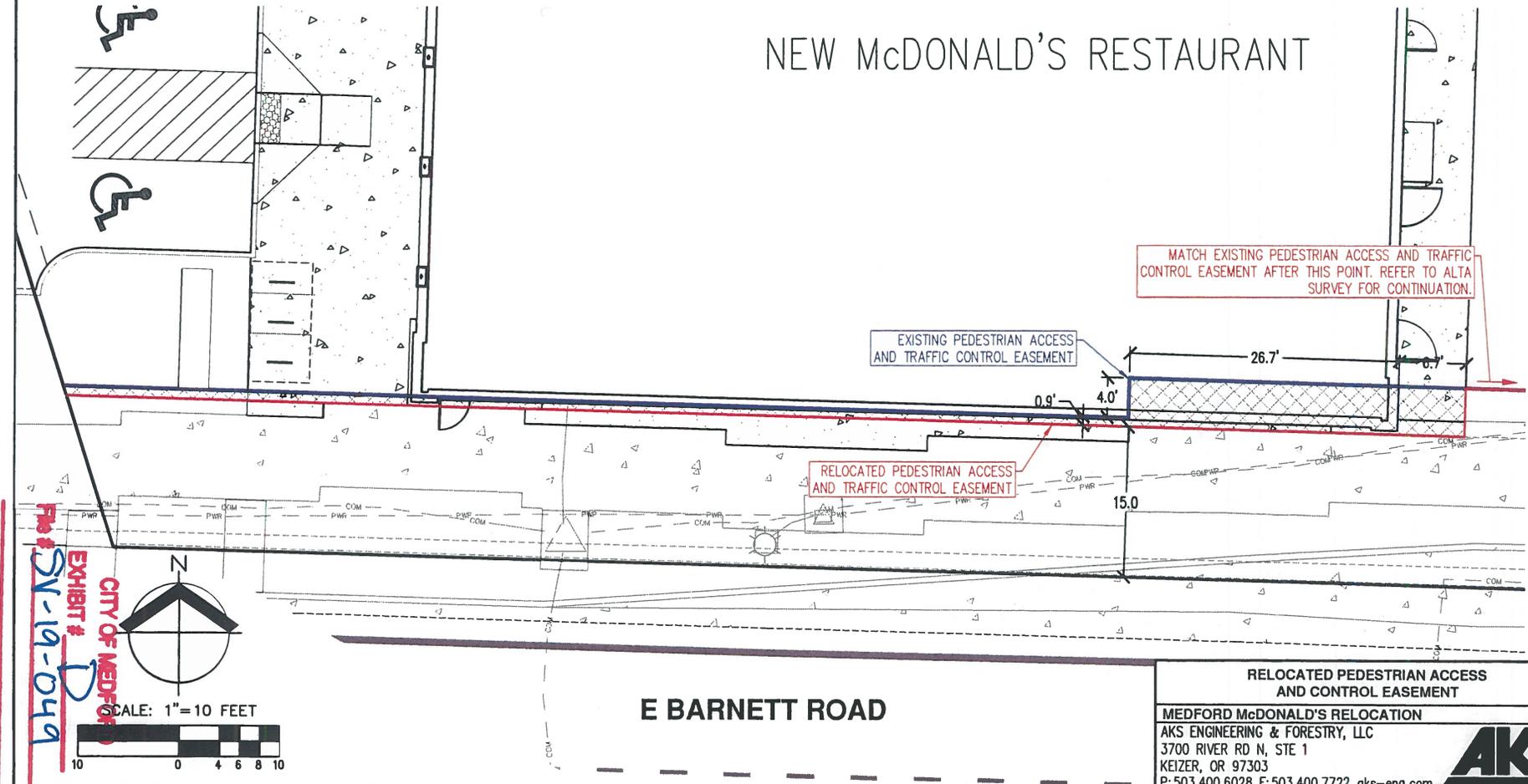
10:33 AM
Hoffbuhr and Associates
COUNTY CLERK

"C"

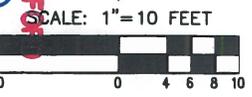
LEGEND

-  AREA OF PEDESTRIAN ACCESS EASEMENT TO BE VACATED
TOTAL AREA = ±265 SF
-  PROPOSED/NEW SIDEWALK
-  EXISTING SIDEWALK

NEW McDONALD'S RESTAURANT



File # SR-19-049
 EXHIBIT # D
 CITY OF MEDFORD



DATE: 10/29/2019

E BARNETT ROAD

RELOCATED PEDESTRIAN ACCESS AND CONTROL EASEMENT		EXHIBIT
MEDFORD McDONALD'S RELOCATION		E
AKS ENGINEERING & FORESTRY, LLC 3700 RIVER RD N, STE 1 KEIZER, OR 97303 P: 503.400.6028 F: 503.400.7722 aks-eng.com		DRWN: TDR CHKD: ZP AKS JOB: 5722-06

DRW: 5722-06 ROW EX E VACATION EX | C100



AKS ENGINEERING & FORESTRY, LLC
12965 SW Herman Road, Suite 100, Tualatin, OR 97062
P: (503) 563-6151 | www.aks-eng.com

AKS Job #5722-06

OFFICES IN: BEND, OR - KEIZER, OR - TUALATIN, OR - VANCOUVER, WA

EXHIBIT A

Pedestrian Access and Traffic Signal Easement Vacation

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Commencing at the southeast corner of Donation Land Claim No. 44; thence North 01°27'41" East 1039.50 feet along the east line of Donation Land Claim No. 44 to the original centerline of East Barnett Road, from which the northeast corner of Donation Land Claim No. 50 bears North 01°27'41" East 952.82 feet; thence, along said centerline, North 88°23'19" West 437.29 feet; thence, leaving said centerline, North 01°54'24" West 52.10 feet, to the northerly right-of-way of East Barnett Road (52.00 feet from centerline) and the southerly southeast corner of the tract per Instrument Number 2018-16111, Deed Records of Jackson County, Oregon; thence North 88°23'19" West 255.35 feet to the southwest corner of said tract; thence, along the west line of said tract, North 17°22'40" West 15.87 feet to the Point of Beginning; thence, continuing along said west line, North 17°22'40" West 1.04 feet; thence, leaving said west line, South 88°20'13" East 105.80 feet; thence North 01°39'47" East 4.00 feet; thence South 88°20'13" East 33.45 feet; thence South 01°36'41" West 4.86 feet; thence North 88°23'19" West 138.91 feet to the Point of Beginning.

The above described tract of land contains 262 square feet, more or less.

12/4/2019

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 9, 2007
NICK WHITE
70652LS

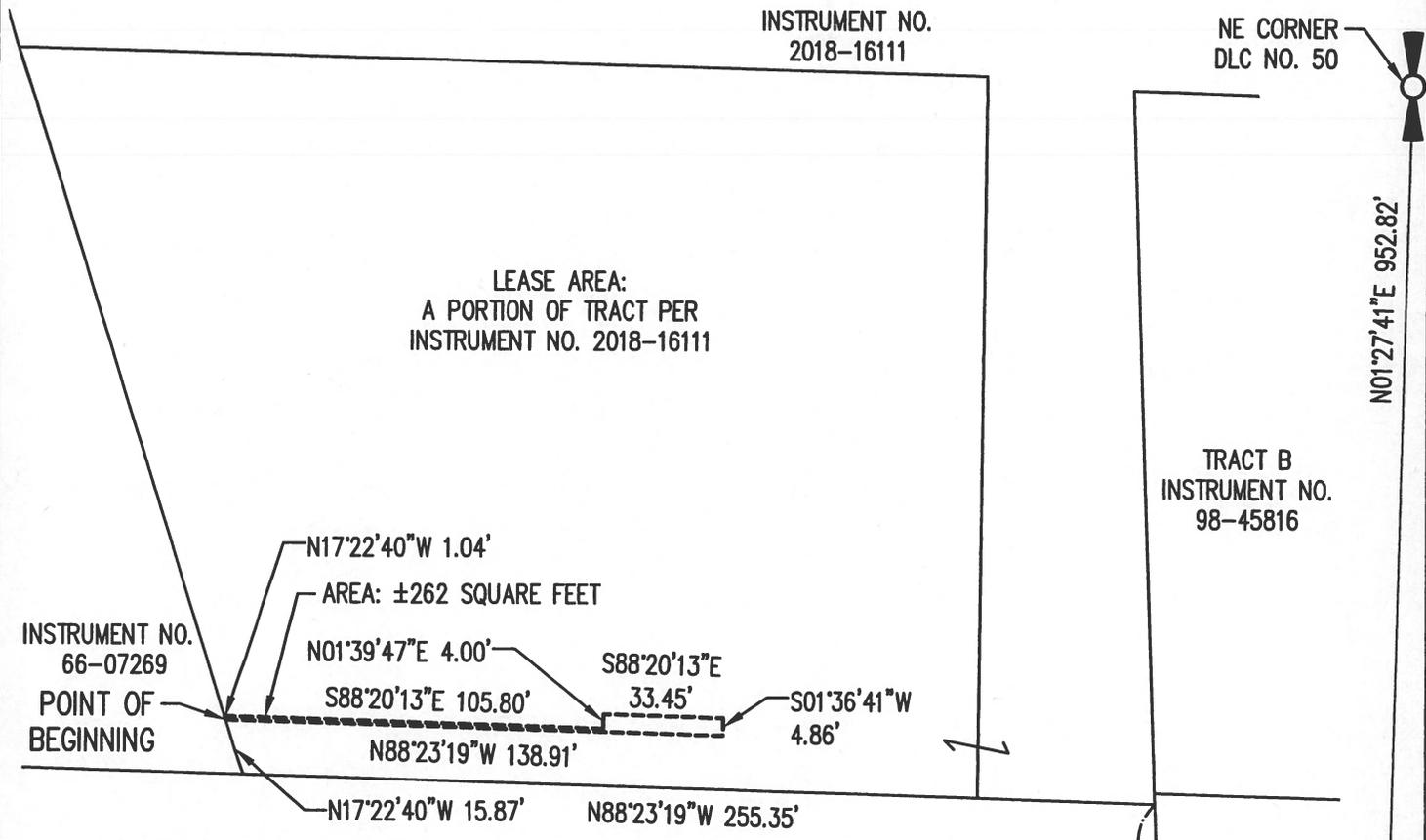
RENEWS: 6/30/20

"D"

EXHIBIT B

MAP OF PEDESTRIAN ACCESS AND TRAFFIC SIGNAL EASEMENT VACATION

A TRACT OF LAND LOCATED IN THE NE 1/4 OF SEC. 31, T37S,
R1W, W.M., CITY OF MEDFORD, JACKSON COUNTY, OREGON



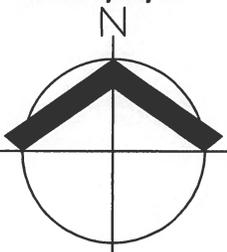
EAST BARNETT ROAD

REGISTERED
PROFESSIONAL
LAND SURVEYOR

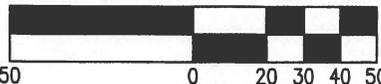
Nick White

OREGON
JANUARY 9, 2007
NICK WHITE
70652LS

RENEWS: 6/30/20



SCALE: 1" = 50 FEET



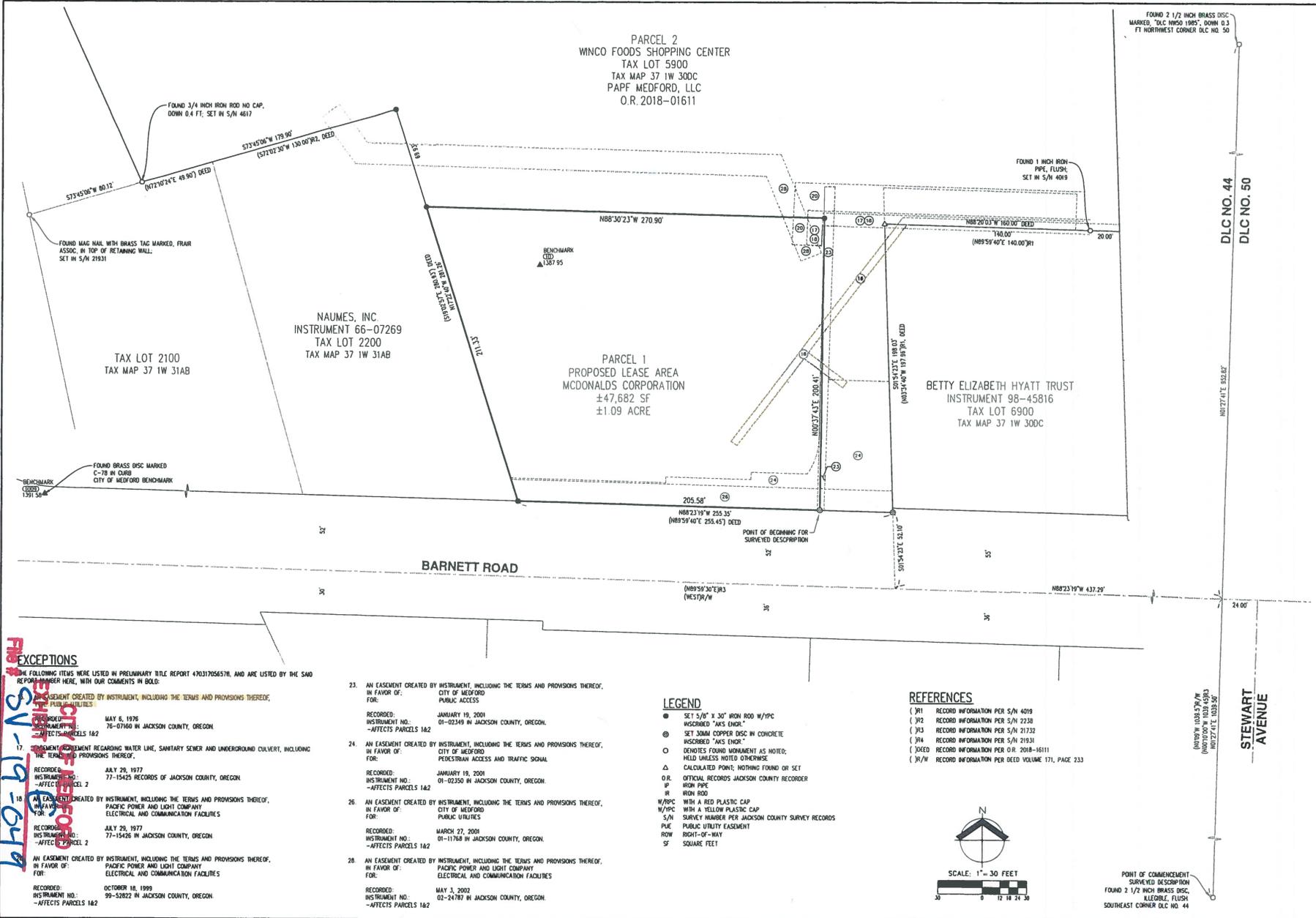
PREPARED FOR
MCDONALD'S USA, LLC
2999 OAK ROAD, SUITE 900
WALNUT CREEK, CA 94597

SE CORNER DLC NO. 44
POINT OF COMMENCEMENT

DATE: 12/4/2019

PEDESTRIAN ACCESS AND TRAFFIC SIGNAL EASEMENT VACATION		EXHIBIT B
AKS ENGINEERING & FORESTRY, LLC 4300 CHERRY AVE NE KEIZER, OR 97303 P: 503.400.6028 F: 503.400.7722 aks-eng.com		DRWN: JS CHKD: WB AKS JOB: 5722-06





AKS
AKS ENGINEERING & FORESTRY, LLC
1000 N. W. 10th St.
TULASIN, OR 97142
P. 503.565.1132
fax-503.565.1132
aks-eng.com

ALTA/NSPS
TITLE LAND SURVEY
OREGON
JACKSON COUNTY, TAX MAP 37 1W 31AB

BOUNDARY MAP AND TITLE LAND SURVEY
EASEMENT EXCEPTIONS
MEDFORD
TAX LOTS 2000

DESIGNED BY: []
DRAWN BY: []
CHECKED BY: []
SCALE: AS NOTED
DATE: 1/23/2019

REGISTERED PROFESSIONAL LAND SURVEYOR
JANUARY 9, 2007
NICK WHITE
70551
NUMBER: 3752772
RELEASING

JOB NUMBER: 5722-06
SHEET: 03

Tax Lot	Area Within Boundary (acres)	Percent of Total Area
600 (House To Home Gallery)	0.50	4.5%
700 (KFC)	0.38	3.4%
800 (Del Taco)	0.10	1.0%
801 (Rooster's)	0.25	2.3%
2000 (Burger King)	0.42	3.8%
2100 (Ex McDonald's)	0.66	6.0%
2200 (Ex McDonald's)	0.70	6.4%
2300 (Sovana Inn)	0.31	2.8%
2400 (Walgreens)	0.56	5.1%
3700 (Vacant)	1.65	15.0%
5800 (Winco Plaza)	0.76	6.9%
5900 (PAPF)	2.81	25.6%
6300	0.03	0.3%
6900 (Jack In The Box)	0.71	6.5%
7000 (New China Chinese Restaurant)	0.21	1.9%
7100 (Royal Crest Motel)	0.65	5.9%
7200 (Chevron)	0.29	2.6%
Totals:	11.00	100.0%

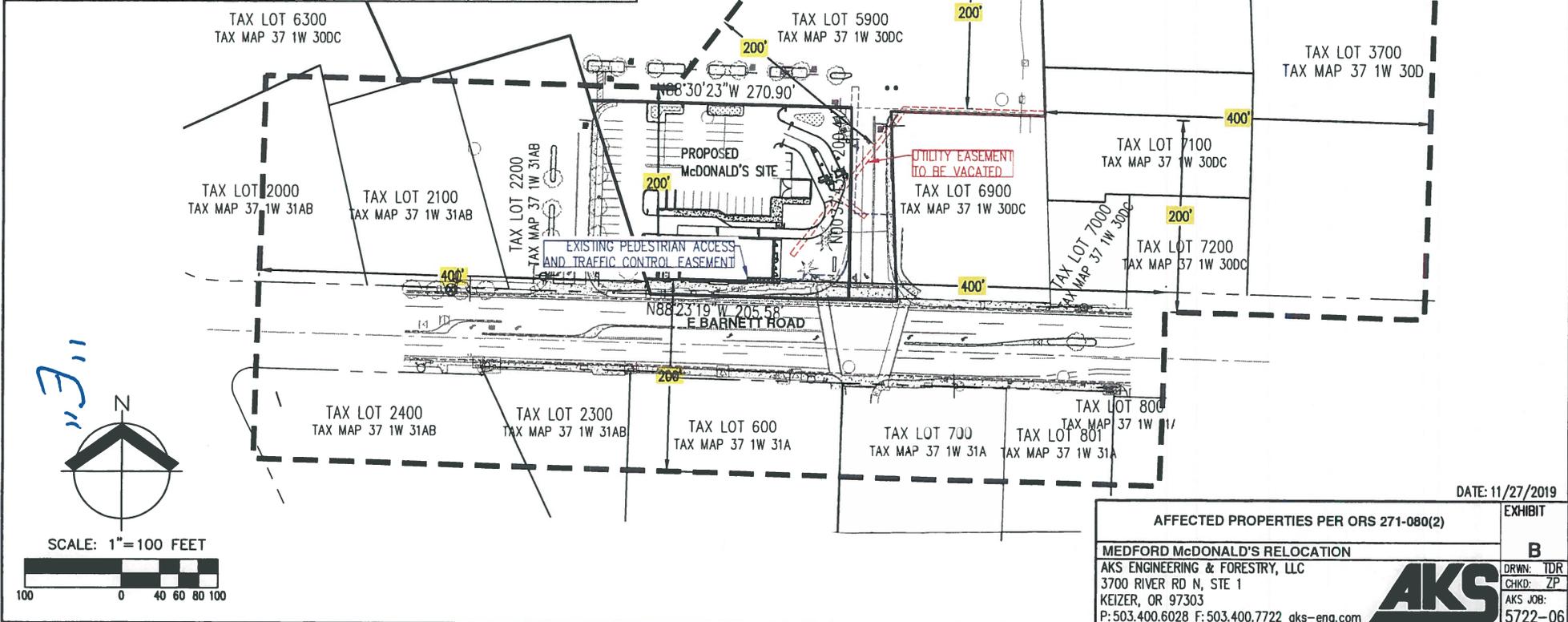
LEGEND



VACATED PORTION OF PEDESTRIAN ACCESS AND TRAFFIC SIGNAL EASEMENT

AREA SUMMARY:

TOTAL AREA = 13.06 ACRES
 AREA WITHIN PUBLIC ROW IN E BARNETT RD = 2.05 ACRES
 AREA EXCLUDING PUBLIC ROW = 11.00 ACRES
 2/3 OF PRIVATE PROPERTY = 7.33 ACRES



DATE: 11/27/2019

AFFECTED PROPERTIES PER ORS 271-080(2)		EXHIBIT
MEDFORD McDONALD'S RELOCATION		B
AKS ENGINEERING & FORESTRY, LLC		DRWN: TDR
3700 RIVER RD N, STE 1		CHKD: ZP
KEIZER, OR 97303		AKS JOB:
P: 503.400.6028 F: 503.400.7722 aks-eng.com		5722-06

DWG: 5722-06 ROW VACATION EX3 | C100

76-07160

4:54 905

After Recording Return to: Until a change is requested,
all tax statements shall be
sent to the following address:

DEED OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the S. S. KRESGE COMPANY, TWENTY-SECOND MEDFORD CORPORATION, JOSEPH ADES and THE NEW YORK BANK FOR SAVINGS, hereinafter referred to as "Grantors", do hereby grant to CITIZENS SAVINGS AND LOAN ASSOCIATION, hereinafter referred to as "Grantee", its successors and assigns, a non-exclusive public utility easement five (5) feet in width, Northerly of, parallel and adjacent to the following described line:

Commencing at the Northwest corner of Donation Land Claim No. 50, Section 31, Township 37 South, Range 1 West, Willamette Meridian, Jackson County, Oregon; thence West 309.80 feet; thence South 702.66 feet to the point of beginning at a point on the North line of the tract of land described by Jackson County Deed Records, Volume 567, page 262; thence South 89 degrees, 59' 20" West 145 feet, more or less; thence South 35 degrees, 25' West 190 feet, more or less, to the terminus of the Public Utility Easement.

TOGETHER WITH a non-exclusive public utility easement five (5) feet in width, Northerly of, parallel and adjacent to the following described line:

Commencing at the point of beginning of the above described Public Utility Easement; thence South 89 degrees, 59' 20" West 145 feet, more or less; thence South 35 degrees, 25' West 115 feet, more or less, to the point of beginning; thence South 54 degrees, 35' East 33 feet, more or less, to the terminus of the Public Utility Easement.

This easement is granted for the purpose of construction, installation and maintenance of utilities, (including water and sewer), together with the right at any time to have free

llc

76-07160

ingress and egress in, to, from and upon said easement for the purpose of maintenance.

There is no monetary consideration involved in this transaction.

TO HAVE AND TO HOLD the within granted non-exclusive easement unto said Grantee, its successors and assigns, forever for the purposes above set out.

IN WITNESS WHEREOF, Grantors have hereunto set their hands and seals as of the 11th day of February, 1976.

S. S. KRESGE COMPANY

By J. P. Johnson
J. P. Johnson, Vice President

By Beatrice L. McGaw
Beatrice L. McGaw, Assistant Secretary



TWENTY-SECOND MEDFORD CORPORATION

By Harold W. Schulkind
Harold W. Schulkind, Vice Pres

By Herbert B. Margulies
Herbert B. Margulies, Asst. Secy

Joseph Ades



The New York Bank For Savings joins in the execution of this easement solely for the purpose of signifying their consent to the grant thereof.

THE NEW YORK BANK FOR SAVINGS
By [Signature]
VICE PRESIDENT



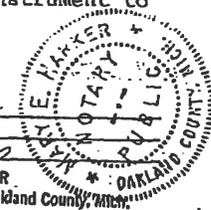
STATE OF MICHIGAN)
COUNTY OF OAKLAND) ss. February 18, 1976

Personally appeared J. P. Johnson and Beatrice L. McGaw, who, being duly sworn, did say that they are the Vice President and Assistant Secretary, respectively, of S. S. Kresge Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and they acknowledged said instrument to be its voluntary act and deed.

Before me:

[Signature]
Notary Public for Michigan

My commission expires: June 12 1977



MARY E. HARKER
Notary Public, Oakland County, Mich.
My Commission Expires June 12, 1977

Page Two - Deed of Easement

"F"

76-07160

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

February 11, 1976

Personally appeared HAROLD W. SHANKIN and HERBERT A. MARGOLIS, who being duly sworn, did say that they are the VICE PRESIDENT and ASST. SECRETARY respectively, of Twenty-Second Medford Corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and they acknowledged said instrument to be its voluntary act and deed.

Before me:

Julie Blanke

Notary Public for New York
My commission expires: March 30, 1977

JULIE BLANKE
Notary Public, State of New York
No. 41-2313060
Qualified in Queens County
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

FEBRUARY 11, 1976

Personally appeared the above named Joseph Ades, who is known to me to be the person described in and who executed the foregoing Deed of Easement, and acknowledged to me that he executed the foregoing instrument freely and voluntarily.

Before me:

Julie Blanke

Notary Public for New York
My commission expires: March 30, 1977

JULIE BLANKE
Notary Public, State of New York
No. 41-2313060
Qualified in Queens County
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF N.Y.) ss.

4-26-76, 1976

Personally appeared Bert T. Palumbo who, being duly sworn, did say that he is the Vice President of The New York Bank for Savings, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and he acknowledged said instrument to be its voluntary act

Before me:

Margaret M. Loge

Notary Public for New York
My commission expires: March 30, 1977

MARGARET M. LOGE
Notary Public, State of New York
No. 31-6738190
Qualified in New York County
Commission Expires March 30, 1977

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

4:04 MAY 6 1976 P.M.

HARRY CHIPMAN
CLERK and RECORDER

By Betty Thompson Deputy

Page Three - Deed of Easement

"F"



LD DATE: 1/22/2020

File Number: SV-19-049

PUBLIC WORKS DEPARTMENT STAFF REPORT

PUE/Pedestrian/Traffic Signal Easement Vacations – 295 East Barnett Road (TL5900)
McDonald's Restaurant

Project: Consideration of a request for the vacation of a Public Utility Easement (PUE) and a Pedestrian Access and Traffic Signal Easement.

Location: Located at 295 E. Barnett Road, within the C-R (Regional Commercial) zoning district.

Applicant: Applicant: McDonald's Corporation; Agent: AKS Engineering and Forestry; Planner: Liz Conner.

Public Works takes no exception to the request to vacate the subject existing public-utility-easement and the portion of the pedestrian access and traffic signal easement as shown on the exhibit.

Prepared by: Jodi K Cope
Reviewed by: Doug Burroughs

CITY OF MEDFORD
EXHIBIT # G
File # SV-19-049



Medford Fire-Rescue Land Development Report

Review/Project Information

Reviewed By: Kleinberg, Greg

Review Date: 1/22/2020
Meeting Date: 1/22/2020

LD File #: SV19049

Planner: n/a

Applicant: n/a

Site Name: n/a

Project Location: 295 E. Barnett Road

Project Description: Consideration of a request for the vacation of a Public Utility Easement (PUE) and a Pedestrian Access and Traffic Signal Easement at 295 E. Barnett Road, within the C-R (Regional Commercial) zoning district

Specific Development Requirements for Access & Water Supply

Conditions

Reference	Description
Approved	Approved as submitted with no additional conditions or requirements.

Construction General Information/Requirements

Development shall comply with access and water supply requirements in accordance with the Oregon Fire Code in affect at the time of development submittal. Fire apparatus access roads are required to be installed prior to the time of construction. The approved water supply for fire protection (fire hydrants) is required to be installed prior to construction when combustible material arrives at the site.

Specific fire protection systems may be required in accordance with the Oregon Fire Code. This plan review shall not prevent the correction of errors or violations that are found to exist during construction. This plan review is based on information provided only.

Design and installation shall meet the Oregon requirements of the International Fire, Building, Mechanical Codes and applicable NFPA Standards.

Medford Fire-Rescue, 200 S Ivy St. Rm 180, Medford OR 97501 541-774-2300

www.medfordfirerescue.org

CITY OF MEDFORD
EXHIBIT # H
File # SV-19-049



MEMORANDUM

To: Elizabeth Connor, Planning Department
From: Chad Wiltrout, Building Department (541) 774-2363
CC: Agent: AKS Engineering & Forestry, LLC
Date: January 21, 2020
Subject: SV-19-049; Vacation of PUE and Ped Access & Signal Easement at 295 E. Barnett Rd.

Please Note:

This is not a plan review. Unless noted specifically as Conditions of Approval, general comments are provided below based on the general information provided; these comments are based on the 2019 Oregon Structural Specialty Code (OSSC) unless noted otherwise. Plans need to be submitted and will be reviewed by a commercial plans examiner, and there may be additional comments.

Fees are based on valuation. Please contact Building Department front counter for estimated fees at (541) 774-2350 or building@cityofmedford.org.

For questions related to the Conditions or Comments, please contact me, Chad Wiltrout, directly at (541) 774-2363 or chad.wiltrout@cityofmedford.org.

General Comments:

1. For list of applicable Building Codes, please visit the City of Medford website: www.ci.medford.or.us Click on "City Departments" at top of screen; click on "Building"; click on "Design Criteria" on left side of screen and select the appropriate design criteria.
2. All plans are to be submitted electronically. Information on the website: www.ci.medford.or.us Click on "City Departments" at top of screen; click on "Building"; click on "Electronic Plan Review (ePlans)" for information.
3. No changes to the building locations or property lines. No comments from building department.

CITY OF MEDFORD
EXHIBIT # I
File # SV-19-049
cityofmedford.org



BOARD OF WATER COMMISSIONERS

Staff Memo

TO: Planning Department, City of Medford

FROM: Rodney Grehn P.E., Water Commission Staff Engineer

SUBJECT: SV-19-049

PARCEL ID: 371W30DC TL 5900

PROJECT: Pre-application to review proposed changes to the General Land Use Plan from General Industrial to Commercial and to change the zone from Light Industrial to Community Commercial, and from Service Commercial to Commercial and to change the zone from Service Commercial and Professional Offices to Community Commercial on combined 13.12 acre across 4 tax lots located between N Riverside Ave, Highway 238 and N Central Ave in the I-L (Light Industrial) and C-S/P (Service Commercial and Professional Offices) zoning districts (372W244000, 372W241004, 372W16DC4600 & 372W13DC4300). Applicant: Northgate Center LLC; Agent: O'Connor Law LLC; Planner, Steffen Roennfeldt.

DATE: January 22, 2020

I have reviewed the above plan authorization application as requested. Conditions for approval and comments are as follows:

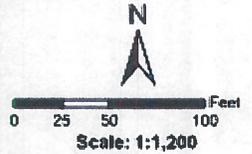
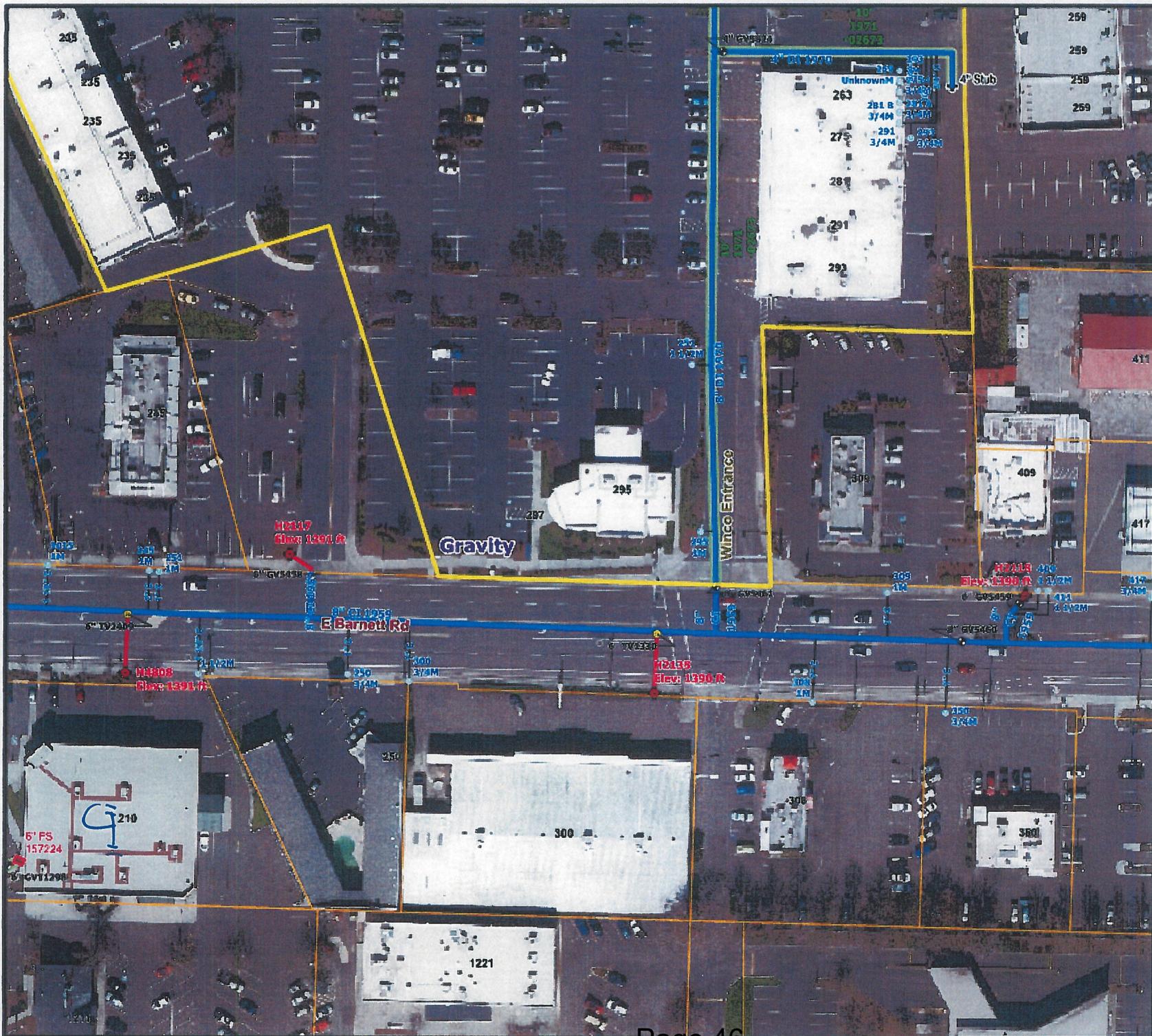
CONDITIONS

1. No Conditions.

COMMENTS

1. No Comments.

CITY OF MEDFORD
EXHIBIT # J
File # SV-19-049



Water Facility Map
City of Medford
Planning Application:
SV-19-049
(371W30DC5900)
Jan 22, 2019

Legend

- Air Valve
 - Sample Station
 - Fire Service
 - ◆ Hydrant
 - ▲ Reducer
 - Blow Off
 - ◆ Plugs-Caps
- Water Meters:**
- Active Meter
 - On Well
 - Unknown
 - Vacant
- Water Valves:**
- ◆ Butterfly Valve
 - Gate Valve
 - Tapping Valve
- Water Mains:**
- Active Main
 - - - Abandoned Main
 - Reservoir Drain Pipe
 - Pressure Zone Line
- Boundaries:**
- ▭ Urban Growth Boundary
 - ▭ City Limits
 - ▭ Tax Lots
- MWC Facilities:**
- C** Control Station
 - P** Pump Station
 - R** Reservoir





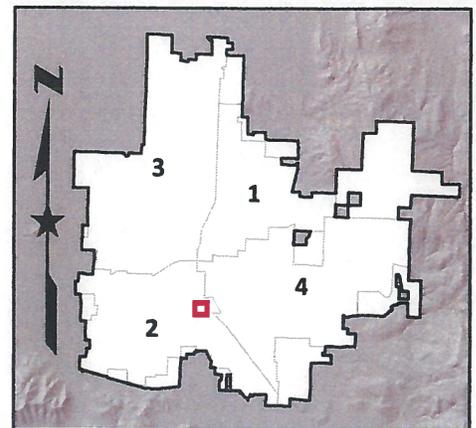
Project Name:
East Barnett Road
Public Utility Easement &
Pedestrian Access &
Traffic Control Easement
Vacation

Map/Taxlot:
371W30DC5900

0 125 250
Feet

Legend

-  Subject Area
-  Tax Lots





AGENDA ITEM COMMENTARY

DEPARTMENT: Legal Department
PHONE: (541) 774-2020
STAFF CONTACT: Eric B. Mitton, Deputy City Attorney

AGENDA SECTION: Public Hearings
MEETING DATE: March 5, 2020

**CONTINUED FROM JANUARY 16, 2020
SUMMARY AND BACKGROUND**

The City Council is being asked to consider an appeal of a "Notice of Sidewalk Abatement Assessment" regarding the sidewalks at Wolf Run Drive/Highcrest, Oregon - Parcel 371W23CC 2600. This particular parcel is a common area within the Meadows at Creekwood Village housing development.

PREVIOUS COUNCIL ACTIONS

On May 18, 2017, Council scheduled an appeal hearing related to a Public Works administrative decision that the sidewalks in the common area of the development at Wolf Run Drive and Eagle Trace Drive are defective and need to be repaired. The hearing was continued.

On June 15, 2017, Council conducted the hearing that was continued from the May 18, 2017 meeting, related to a Public Works administrative decision that the sidewalks in the common area of the development at Wolf Run Drive and Eagle Trace Drive are defective and need to be repaired. After extensive testimony, the hearing was tabled.

On May 17, 2018, Council conducted the continued hearing related to the Public Works administrative decision. Council denied Appellants' appeal, finding that David and Elahe Young were personally liable for the repairs and necessarily finding that the repairs were necessary.

On June 7, 2018, Council approved Resolution 2018-60, memorializing the May 17, 2018 decision.

On January 16, 2020, City Council continued this appeal hearing at the request of Appellants. The purpose of the continuance was to allow Appellants time to finalize a reported settlement with neighboring property owners.

ANALYSIS

Since Council's decision on May 17, 2018, no progress was made on repairing the sidewalks at issue. Ultimately, in October 2019, the City (through a contractor) repaired the sidewalks itself. Because the Youngs have taken the position that the May 17, 2018 decision is not binding on them, future legal action may be needed to secure repayment. That is not the issue for this proceeding, however.

For this proceeding, the only question is whether the lien placed on the real property itself is appropriate. Appellants' notice of appeal does not articulate a challenge to the existence of a lien on the real property, nor does it articulate a challenge to the magnitude of the lien on the real property.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

The lien would be in the amount of \$21,800.00 (contractor cost plus 25% administrative fee). Because the real property upon which the lien would be placed is a common area within a residential



AGENDA ITEM COMMENTARY

subdivision, the lien is not expected to result in immediate repayment of that cost, and other legal action may be necessary. However, the lien does create another possible source of repayment of the City's cost in repairing the sidewalk.

Prior to the January 16, 2020 City Council appeal hearing, Appellants requested a continuance of the hearing to execute a settlement with local homeowners; Appellants represented that the City's sidewalk repair costs would be repaid out of that settlement agreement. However, since that Council hearing, neither the attorney for Appellants nor the attorney for the homeowners has provided the City with settlement funds or an update about the status of the alleged settlement.

TIMING ISSUES

None.

COUNCIL OPTIONS

Affirm the lien assessment and deny the appeal.

Deny the lien assessment and affirm the appeal.

STAFF RECOMMENDATION

Staff recommends affirming the lien assessment and denying the appeal.

SUGGESTED MOTION

I move to affirm the lien assessment and deny the appeal.

EXHIBITS

Executive summary, including exhibits



MEMORANDUM

To: Mayor and Council
From: Eric B. Mitton, Deputy City Attorney
Meeting Date: March 5, 2020
Subject: Executive Summary

DESCRIPTION

Consideration of an appeal of a "Notice of Sidewalk Abatement Assessment" regarding the sidewalks at Wolf Run Drive/Highcrest, Oregon – Parcel 371W23CC 2600. This particular parcel is a common area within the Meadows at Creekwood Village housing development.

As background context, these particular sidewalks have been the subject of multiple prior City Council meetings (specifically June 15, 2017, and May 17, 2018). During the May 2018 proceeding, Council determined that David and Elahe Young were personally liable for the sidewalk repairs and could not deflect liability onto a dissolved corporation that had never been funded for these sorts of repair purposes (though they could seek reimbursement from the residents of the subdivision). After that meeting, no action was taken by either Dr. Young or residents of the subdivision to repair the sidewalks. Eventually, the City of Medford repaired the sidewalks itself in October 2019. The Youngs have refused to reimburse this amount pursuant to Council's prior decision, so Circuit Court action may be required to obtain payment from the Youngs personally.

This particular appeal proceeding, however, does not address Dr. Young's personal liability. Instead, as part of routine practice, the City places a lien on any real property where such abatement has occurred until the City is repaid. It is unlikely that this particular lien will result in reimbursement unless redevelopment of the area occurred, since the parcel at issue is a common area and not a housing lot. Nevertheless, City staff, as regular practice, intends on placing a lien in addition to pursuing reimbursement from Dr. Young personally.

David and Elahe Young, through their attorney, filed a notice of appeal, stating objection "to a sidewalk abatement assessment to the extent the city seeks to hold them individually liable." Although the City does intend on holding the Youngs individually liable—consistent with Council's prior decision on that issue—this particular lien assessment is not part of that process. This lien is against the real property itself, not any

individual person. City staff explained this to the Youngs' attorney, but the Youngs have not withdrawn their appeal.

WHAT ARE THE ISSUES BEFORE CITY COUNCIL?

The sole issues before City Council for this particular proceeding are whether the City should place a lien on this property in connection with sidewalk abatement that the City performed on that property, and whether the amount of that lien is appropriate.

The issue of whether the sidewalks needed repair is not before City Council. That was necessarily decided by City Council on May 17, 2018 when Appellants' last sidewalk appeal was decided.

CITY COUNCIL SCOPE OF REVIEW AND CODE CRITERIA

The applicable procedure for this hearing, including City Council's scope of review, is listed in Medford Municipal Code Sections 1.025(4), 3.030(3) and 5.535(1) and (2). Section 1.025(4) states:

At the hearing the appellant or other parties interested may present witnesses and offer evidence in support of their case and, in the discretion of the council or appellate board, evidence may be heard to sustain the administrative decision.

Section 3.030(3) states:

The Public Works Director or designee shall cause a record to be kept of the cost incurred to repair the sidewalk, including a charge of 25 percent or \$15, whichever is greater, for engineering and administration, and shall file a statement of costs with the City Recorder, who may then assess the costs on the property as provided in Section 5.535.

Sections 5.535(1) and (2) state:

(1) The City Recorder shall mail notice of the assessment for the cost of nuisance abatement to the property owner or his agent, stating:

(a) The date the notice is mailed;

(b) The cost of abatement;

(c) That the cost will be assessed to and become a lien against the property for the amount indicated;

(d) That objections to the proposed assessment must be made in writing and filed with the Recorder not more than 15 days after mailing the notice.

(2) Not less than 15 days after the date of the notice, objections to the proposed assessment shall be heard and determined by the Council in its regular course of business.

As such, potential questions on appeal of the lien assessment are whether the cost of abatement was correctly calculated, and whether entry of a lien against the real property is appropriate.

CHRONOLOGY

1. On March 15, 2017, a letter was sent to David and Elahe Young informing them that the sidewalks and curb ramps fronting Wolf Run Drive and Eagle Trace Drive were defective and required repair.
2. On June 15, 2017, Mr. Iraj Ostovar appeared at a public hearing before City Council in Dr. Young's place and asserted that four other individuals besides Dr. Young were contacts for "Meadows at Creekwood Home Owners Association." However, Mr. Mark Knouff, one of those four individuals, appeared at the public hearing and asserted that the homeowners' association had yet to be established. The sidewalk appeal was tabled by Council so that staff could also provide notice to Meadows at Creekwood Home Owners Association through its registered agent Dr. Young.
3. On May 17, 2018, the continued hearing was brought back to City Council. No repairs had been made, and the homeowner's association remained administratively dissolved. Dr. Young and his attorney, Mr. Talmadge, testified. After a lengthy hearing, Council determined that David and Elahe Young should be personally liable for the sidewalk repairs and denied the appeal. In denying the appeal, Council also necessarily decided that the sidewalks did indeed need repairs, a point David and Elahe Young had never substantively disputed.
4. On May 19, 2018, Dr. Young submitted a sidewalk repair permit request. However, sidewalk repairs were never performed.
5. On June 19, 2018, Dr. Young wrote to the Mayor, City Council, and the Deputy City Attorney, requesting that the city take no action with respect to the sidewalk until after appeal deadlines from the Council's decision had run, and stating that repair estimates were being obtained in case David and Elahe Young did not appeal further. No further appeal was filed, and no repairs were made.
6. Between June 2018 and October 2019, counsel for the City and counsel for the Youngs communicated repeatedly. Assurances were made that the issue would be resolved imminently, which never materialized. Counsel for the Youngs made clear

that the Youngs did not consider themselves bound by Council's decision of May 17, 2018.

7. In October 2019, the City of Medford, acting through a contractor, repaired the sidewalks. The contractor invoiced the City \$17,440.00. That sum, plus the 25% administrative fee mandated by MMC 3.030(3), totals \$21,800.00.
8. On October 31, 2019, the City of Medford mailed a "notice of sidewalk abatement assessment" in the amount of \$21,800.00 to "Meadows at Creekwood Village H.O.A., Attn Dr. David Young." Meadows at Creekwood Village H.O.A. is the dissolved corporation that remains the record owner of the parcel at issue. Dr. David Young is the last individual who served as that now-dissolved corporation's registered agent and was served with this particular notice in that capacity.
9. On November 11, 2019, David and Elahe Young, through their attorney Mr. Talmadge, filed an appeal stating "Dr. David Young and Elahe Young object to a sidewalk abatement assessment to the extent the city seeks to hold them individually liable," and telling the City to pursue a remedy against the long-dissolved corporation "Meadows at Creekwood Village H.O.A."
10. Since November 11, 2019, counsel for the City has repeatedly asked Appellants to withdraw the appeal, since the basis of the appeal (disputing Council's prior decision regarding personal liability) does not relate to the matter being appealed (assessment of an abatement lien against personal property). Appellants have not withdrawn the appeal.
11. This matter was set for City Council appeal on January 16, 2020. Prior to that hearing, Appellants requested a continuance of the hearing to execute a settlement with local homeowners; Appellants represented that the City's sidewalk repair costs would be repaid out of that settlement agreement. Council continued the hearing at Appellants' request. However, since that Council hearing, neither the attorney for Appellants nor the attorney for the homeowners has provided the City with settlement funds or an update about the status of the alleged settlement.

CITY COUNCIL OPTIONS

After considering the testimony and evidence that staff and Appellants provide before and during her hearing before City Council, Council can either:

- (1) Find that the lien assessment against the real property in the amount of \$21,800 is warranted and deny the appeal, or
- (2) Find that the lien assessment against the real property in the amount of \$21,800 is unwarranted and grant the appeal.

RECOMMENDATION

Appellants' notice of appeal does not articulate any reason why a lien should not be placed on the real property at issue for the sidewalk abatement that the City of Medford performed in October 2019. Staff recommends denying the appeal and affirming the lien assessment.

EXHIBITS

- 1 Invoice for sidewalk repairs
- 2 Assessment letter
- 3 Notice of appeal



Invoice INV0052

NAME The City Of Medford
 ADDRESS 200 S. Ivy Medford OR. 97501
 EMAIL ken.parducci@cityofmedford.org
 DATE October 21, 2019
 DUE October 31, 2019

Tavin Jessen Concrete LLC
 Tavin
 975 Dahlia Ter. Eagle point OR. 97524
 541-538-9112
 tjessen1@outlook.com

DESCRIPTION	UNIT PRICE	QTY	TOTAL
Wolf Run <i>12 sidewalk grinds at \$150 = \$1,800</i> <i>12 sidewalk panels demo and re-pour \$13.25 a Square foot = \$4,000</i> <i>Wheelchair ramp rip out and replace = 4,500</i> <i>Sidewalk gap repair \$21.25 a lineal foot 336ft = \$7,140</i>			\$17,440.00
		SUBTOTAL	\$17,440.00
		TOTAL	\$17,440.00
		PAID	\$0.00
		DUE	\$17,440.00

Payment instructions

By check
 Make checks payable to: Tavin Jessen Concrete



MEDFORD
CITY MANAGER'S OFFICE

October 31, 2019

Meadows at Creekwood Village H.O.A.
Attn: Dr. David Young
348 S. Modoc Avenue
Medford, OR 97504

Meadows at Creekwood Village H.O.A.
Attn: Dr. David Young
1309 NE Sixth Street
Grants Pass, OR 97526

NOTICE OF SIDEWALK ABATEMENT ASSESSMENT

Legal registered owner or agent of the following real property: Wolf Run Drive/Highcrest, Medford, Oregon – Parcel 371W23CC 2600

Per Medford Code Section 5.535 you are hereby notified that the above property owes **\$21,800.00** to the City of Medford for sidewalk abatement services performed at the above property. Enclosed is the invoice for that service.

Objections to the proposed assessment must be made in writing and filed with the City Recorder not more than 15 days after the mailing of this notice. This assessment will become a lien against the property for the amount indicated with an annual interest rate of 18%.

An error in the name or address of the owner or agent in charge of the property or failure to receive the notice of assessment shall not render the assessment void, but it shall remain a valid lien against the property.

Karen M. Spoonts, MMC
City Recorder

Mailing Date: October 31, 2019
Deadline to Object: November 15, 2019

Attachment: Invoice

Cc: Nepheli Sparks, Engineering



City of Medford
 411 W. 8th Street
 Medford, OR 97501
 541-774-2030

INVOICE

Customer Type: SIDEWALK
Customer Number: C00109028
Invoice Number: IN022254
Invoice Date: 10/30/19
Terms: DUE UPON RECEIPT

To: MEADOWS AT CREEKWOOD VILLAGE H.O.A.
 Attn: DR DAVID F YOUNG
 348 S Modoc Ave
 MEDFORD, OR 97504

Trans Date	Description	Amount
10/30/19	WOLF RUN DR Case #17-00874 Sidewalk Abatement Lien #2019-36	21,800.00
Total Due		21,800.00

Tax Lot 371W23CC2600

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

Customer Type: SIDEWALK
Customer Number: C00109028
Invoice Number: IN022254
Invoice Date: 10/30/19
Total Amount Due \$ 21,800.00

Please make checks payable to:



City of Medford
 Attn: Finance Dept.
 411 W. 8th Street
 Medford, OR 97501
 541-774-2030

Total Payment \$ _____



MEDFORD
CITY MANAGER'S OFFICE

December 12, 2019

Edward H. Talmadge, P.C.
Attorney at Law
135 5th Avenue SW
Albany, OR 97321

Dear Mr. Talmadge:

The Medford City Council will consider an appeal pertaining to Dr. David Young and Elahe Young's objection to a sidewalk abatement assessment in the amount of \$21,800 for parcel 371W23CC 2600.

The public hearing on this matter has been scheduled for the regular City Council meeting on Thursday, January 16, 2020 at 6 p.m. at the Medford City Hall Council Chambers, 411 W. 8th Street, Medford.

You may contact the Recorder's Office at 541-774-2017 with any questions regarding this appeal hearing.

Sincerely,

Karen M. Spoonts, MMC
City Recorder

cc: Mayor/Council
Eric Mitton, Legal Department
Meadows at Creekwood Village H.O.A. (Attn: David Young)
Milan Hanson; Hanson/Tharp Attorneys at Law



MEDFORD
OREGON

cityofmedford.org

Item No: 100.1

AGENDA ITEM COMMENTARY

DEPARTMENT: Public Works Department

PHONE: (541) 774-2100

STAFF CONTACT: Cory Crebbin, Public Works Director

AGENDA SECTION: City Manager Reports

MEETING DATE: March 5, 2020



MEMORANDUM

To: Brian Sjothun, City Manager
From: Cory Crebbin, P.E., Director of Public Works
Date: 27Feb20
Subject: ODOT JURISDICTIONAL EXCHANGE - HWY 62

cc3087.docx

City Manager Information

The Oregon Highway Plan requires that when a parallel state transportation facility is built (a bypass) that the State is required to work with the local city and/or county to jurisdictionally exchange the right-of-way of the existing highway for maintenance and operations. City staff have been in discussions with the Oregon Department of Transportation (ODOT) regarding the disposition of Highway 62 since the Highway 62 bypass project was funded. The segment to be transferred to the City is from approximately Delta Waters Road to Vilas Road.

The process for a jurisdictional exchange involves calculating the pavement condition and maintenance costs for a 20-year period. This included a new pavement overlay for a good portion of the roadway in question as well as signs, traffic signals, ADA and building a turnaround (potential cul-de-sac) on Commerce Drive. The proposed payment from ODOT to the City is \$6.45M.

Staff concurs with the proposed jurisdictional exchange and a Jurisdictional Transfer Agreement has been drafted by ODOT. Staff will submit an Agenda Item for the March 19th Council meeting for consideration of the agreement.