



Ordinance No. 06-25

**A SPECIAL ORDINANCE VACATING A PORTION OF THE VISTA WAY
RIGHT-OF-WAY ADJACENT TO LOTS 9 THROUGH 16 OF THE SUBDIVISION OF
LOT 1 BLOCK 10, TRACT 1173 AND LOT 1 OF BLOCK 11 OF
THE LYNNEWOOD SUBDIVISION TRACT 1091**

WHEREAS, Council did hereby initiate vacation proceedings for a portion of the Vista Way right-of-way adjacent to lots 9 through 16 of the subdivision of lot 1 block 10, tract 1173 and lot 1 of block 11 of the Lynnewood Subdivision Tract 1091 through Resolution 06-17; and

WHEREAS, the Community Development Director was directed to initiate the vacation process under Sections 13.005 to 13.055 of the Community Development Ordinance through the same Resolution; and

WHEREAS, the applicant, City of Klamath Falls has submitted a written proposal for vacation of certain real property which is hereinafter described; and

WHEREAS, the Planning Commission cancelled the public hearing due to a lack of a quorum on June 26, 2006; and

WHEREAS, a public hearing was held on July 10, 2006, pursuant to applicable laws, at which time all evidence and objection with reference to said proposed vacation were considered by the Planning Commission; and

WHEREAS, the City Council hearing notices having been duly given, did hold a public hearing on August 7, 2006, on the recommendation of and including the record of the Planning Commission concerning the vacation; and

WHEREAS, pursuant to such record and hearing the City Council has determined the vacation to be in compliance with the Community Development Ordinance and the Comprehensive Plan; and

WHEREAS, the City is establishing a 60' wide public utility easement to repair or reconstruct existing utilities, or to install additional utilities or future pedestrian access, as needed and;

WHEREAS, the City Council adopted the findings of the Planning Commission attached hereto and incorporated by this reference as Exhibit B; NOW THEREFORE,

THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

There are hereby vacated, rights-of-way of land as shown on the map attached hereto as Exhibits A 1 and A 2, and described as:

A portion of Vista Way, situated in the NE ¼ SE ¼ of Section 25, T38S, R8EWM, Klamath County, Oregon, being more particularly described as follows:

All that portion of the Vista Way lying northeasterly of the following described line; beginning at the point on the southeasterly right of way line on said Vista Way, from which the most northerly corner of Lot 16 of "Tract 1173 – a subdivision of Lot 1, Block 10, Lynnewood" bears N38°28'00"E 84.42 feet; thence N51° 32'00"W 60.00 feet, more or less, to a point which bears N38° 28'00"E 30.00 feet from the southwest corner of Lot 8 of "Lakeshore Gardens", which bearings based on the plat of said "Tract 1173" on file at the office of the Klamath County Clerk.

provided, however, a 60' wide public utility easement is established for this same area to repair or reconstruct existing utilities, or to install additional utilities or future pedestrian access, as needed. Passed by the Council of the City of Klamath Falls, Oregon, the 21st day of August, 2006.

Presented to the Mayor, approved and signed this 22nd day of August, 2006.



Mayor

ATTEST:



City Recorder

STATE OF OREGON }
COUNTY OF KLAMATH }
CITY OF KLAMATH FALLS } SS

I, Shirley Kappas, ~~Recorder~~ (Deputy Recorder) for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon at the meeting on the 21st day of August, 2006 and therefore approved and signed by the Mayor and attested by the City Recorder.



~~City Recorder~~ (Deputy Recorder)

Exhibit A 2
Detailed Vicinity Map

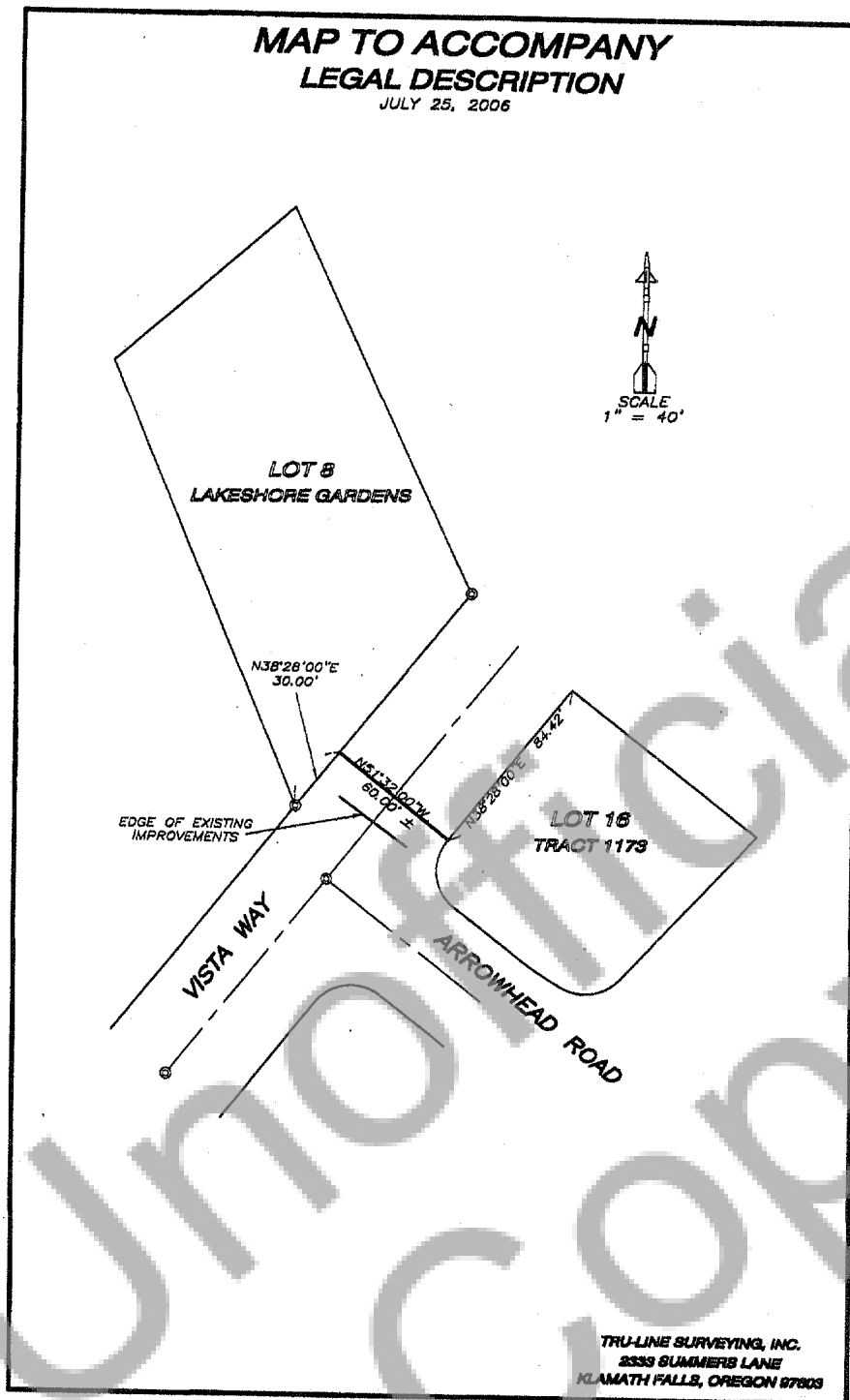


Exhibit B FINDINGS

RELEVANT REVIEW CRITERIA, FACTS AND ANALYSIS, AND PROPOSED FINDINGS

This proposal is being reviewed according to the provisions of the Klamath Falls Community Development Ordinance (CDO), Chapters 10-14, specifically Sections 13.005-13.055, regarding Vacations.

A. Criterion: Consent of the owners of the requisite area has been obtained.

Facts and Analysis: Per CDO Section 10.515(1) consent of the owners of all abutting property and of not less than two thirds in area of the real property affected thereby as defined by ORS 271.080(2) are required. Council approved Resolution 06-17, initiating the vacation proceedings on May 15, 2006.

Finding: The Consent of the owners of the requisite area did not need to be obtained as the vacation proceedings were initiated by the City Council on May 15, 2006, by Resolution. **This criterion is met.**

B. Criterion: Notice of the proposed vacation has been duly given.

Facts and Analysis: Notice of this public hearing was mailed to 48 adjacent property owners within 500 feet of the subject property on May 17, 2006 and published in the Herald and News on June 6, 2006.

Finding: Notice of the proposed vacation was duly given by mail and published in the local newspaper. **This criterion is met.**

C. Criterion: The public interest will not be prejudiced by the vacation of such plat or part thereof.

Facts and Analysis: Currently the right-of-way is an unimproved dirt path. This has been and continues to be used as a multi-use off-road trail by the local residents for passive exercise such as walking, jogging, biking and general wildlife viewing. The trail has the potential to extend from Lakeshore Drive near Marina #2, through Lynnewood, across City owned open space, and to the RidgeWater Subdivision. The right-of-way was created to provide an entrance to the Lynnewood subdivision, but the roadway was never constructed. On the subdivision plat all access rights for Lots 9-16 onto this portion of Vista Way were vacated. The rationale could have been to prevent driveways from accessing the main entrance to Lynnewood. Topography of the area is steep and there is potential for alignment issues of the right-of-way and Lakeshore Drive. It is not foreseen that this right-of-way would be constructed as secondary access to Lakeshore Drive from Lynnewood. However, it is possible that the lots abutting Lakeshore would request access from the Vista Way right-of-way.

As platted, the right-of-way was created by the original developer for the Lynnewood residents and not for the adjacent Lake Shore Gardens Subdivision. After the vacation, this property will be equally distributed to those adjacent properties in the Lynnewood Subdivision for lots 9-16 of Block 10, Tract 1173 and lot 1 of Block 11, Tract 1091 of the Lynnewood Subdivision. No portion of the vacated right-of-way shall be dedicated to the abutting lots 5 through 8 within the Lake Shore Gardens Subdivision and have access onto Lake Shore Drive.

Sewer, water, gas and phone utility lines are located within the right-of-way. If the right-of-way is vacated, access to these utilities can be preserved through the creation of a PUE, so providers can maintain the lines. It is also possible to permit pedestrian and bicycle access across the PUE.

Pacific Power and Light requests the following language to be included in the Public Utility Easement:

"Utilities shall have the right to install, maintain, and operate their equipment above and below ground and all other related facilities within the Public Utility Easements identified on this plat map as may be necessary or desirable in providing utility services within and without the lots identified herein, including the right of access to such facilities and the right to require removal of any obstructions including structures, trees and vegetation that may be placed within the PUE. The utility may require the lot owner to remove all structures within the PUE at the lot owner's expense, or the utility may remove such structures at the lot owner's expense. At no time may any permanent structures be placed within the PUE or any other obstruction which interferes with the use of the PUE without the prior written approval of the utilities with facilities in the PUE."

The trail will continue to be maintained by the adjacent residents of Lynnewood and the trail users.

Finding: The public interest will not be prejudiced by the vacation of said portion of Vista Way with the following condition:

Condition: A public utility easement (PUE) shall be created for the entire 60' right-of-way, permitting access to all utilities and for pedestrian and bicycle access.

D. Criterion: The vacation conforms to the Comprehensive Plan, all applicable provisions of Chapters 10 to 14 of the City Code and any applicable street plans.

Facts and Analysis: Currently the right-of-way is an unimproved dirt path. This has been and continues to be used as a multi-use off-road trail by the local residents for passive exercise such as walking, jogging, biking and general wildlife viewing. After the vacation, this property will be equally distributed to those adjacent properties in the Lynnewood Subdivision for lots 9-16 of Block 10, Tract 1173 and lot 1 of Block 11, Tract 1091 of the Lynnewood Subdivision. No portion of the vacated right-of-way shall be dedicated to the abutting lots 5 through 8 within the Lake Shore Gardens Subdivision and have access onto Lake Shore Drive.

A PUE will be created to provide access to utility providers, pedestrians and bicycles. The trail will continue to be maintained by the adjacent residents and trail users.

The following Comprehensive Plan Policies apply:

Policy 47: Harmonious relationships between natural topographic features, parks, homes, businesses, streets, and open spaces will be promoted.

Topography of the area is steep and there is potential for alignment issues of the right-of-way and Lakeshore Drive. It is not foreseen that this right-of-way would be constructed as secondary access to Lakeshore Drive from Lynnewood. The intent is not to disturb the existing natural topographic features of the area, but rather preserve a passive recreation trail within the Lynnewood subdivision.

This policy is met.

Policy 49: Efforts will be made to preserve the open spaces and scenic values of hilltops and other similar promontories, including public access to them.

The intent is not to disturb the existing natural topographic features of the area, but rather define a passive recreation trail within the Lynnewood subdivision. The right-of-way is undeveloped but serves as pedestrian and bicycle access from the developed portion of Vista Way to Lakeshore Drive, specifically, to the location of the old ice skating rink. The location of the trail is not yet determined (surveyed), but the intent is to follow the existing footpath.

This policy is met.

Policy 128: A system of trails for pedestrian and non-motorized vehicle use will be established to lead out of the City into surrounding open spaces and scenic areas.

The proposal is to create a passive recreation trail. The right-of-way is undeveloped but serves as pedestrian and bicycle access from the developed portion of Vista Way to Lakeshore Drive, specifically, to the location of the old ice skating rink. The location of the trail is not yet determined (surveyed), but the intent is to follow the existing footpath. This has been and continues to be used as a multi-use off-road trail by the local residents for passive exercise such as walking, jogging, biking and general wildlife viewing. The trail has the potential to extend from Lakeshore Drive near Marina #2, through Lynnewood, across City owned open space, and to the RidgeWater Subdivision. The right-of-way was created to provide an entrance to the Lynnewood subdivision, but the roadway was never constructed.

This policy is met.

The existing unimproved trail has the potential to extend from Lakeshore Drive near Marina #2, through Lynnewood, across City owned open space, and to the RidgeWater Subdivision. The right-of-way was created to provide an entrance to the Lynnewood subdivision, but the roadway was never constructed. If vacated the Vista Way right-of-way would become a dedicated trail for continued use by the local residents of Lynnewood.

Finding: The vacation conforms to the Comprehensive Plan, all applicable provisions of Chapters 10 to 14 of the City Code and any applicable street plans.