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Ordinance No. 08-12

**A SPECIAL ORDINANCE VACATING A PORTION OF FULTON STREET
RIGHT-OF-WAY (FORMERLY ALBERSON STREET) LYING WEST OF
JOHNSON AVENUE BETWEEN BLOCK 27 AND BLOCK 28 OF HILLSIDE
ADDITION, AND RESERVING AN EASEMENT.**

WHEREAS, the applicant, The City of Klamath Falls, on behalf of Stephen Gaston and Richard Wymore, has submitted a written proposal for vacation of certain real property which is hereinafter described; and

WHEREAS, a public hearing was held on April 14, 2008, 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, hearing notices were duly given and the City Council held a public hearing on May 19, 2008, 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 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:

Section 1.

The right-of-way, as shown on the map attached hereto as Exhibit A and described as follows, is hereby vacated, subject to the reservation of easement set forth in Section 2:

A STRIP OF LAND 60 FEET WIDE AND BEING A PORTION OF FULTON STREET (FORMERLY KNOWN AS ALBERTSON STREET) AS SHOWN ON THE SUBDIVISION PLAT OF HILLSIDE ADDITION TO KLAMATH FALLS, OREGON, SAID STRIP OF LAND BEING 30 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

Beginning at the intersection of the centerline of said Fulton Street with the west right of way line of Johnson Avenue, as shown on said subdivision plat; thence westerly, along said centerline, to the east right of way line of vacated Lexington Avenue (Ordinance 2148) and the end of said 60-foot wide vacation. The side lines of said strip to be shortened or lengthened to terminate on the beginning and ending lines described.

Said portion of right-of-way can be found on Klamath County Assessor's Map R-3809-29DA.

Section 2.

The City of Klamath Falls hereby reserves a perpetual, exclusive easement on a portion of the vacated right-of-way, as shown on the drawing attached hereto as Exhibit C and described in Exhibit D, for the purposes of installing, inspecting, repairing, maintaining, altering and operating a City water line serving the Linkville Cemetery. The owner of the property on which the easement sits shall not erect any buildings or structures that would inhibit access to City's water line(s) or cause damage to thereto, and said owner shall not install any landscaping that in City's judgment would interfere with the lines. All use of the easement area shall not interfere with City's use and enjoyment of this easement.

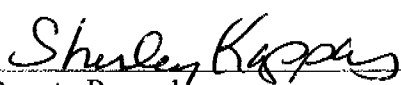
Passed by the Council of the City of Klamath Falls, Oregon, the 15th day of September, 2008.

Presented to the Mayor, approved and signed this 16th day of September, 2008.



Mayor

ATTEST:



Deputy Recorder

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

I, _____, 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 15th day of September, 2008 and therefore approved and signed by the Mayor and attested by the Deputy Recorder.

City Recorder (Deputy Recorder)

**Exhibit A
VICINITY MAP
(No Scale)**

NE1/4 SE1/4 SEC. 29 T.38S. R.09E. W.M.
KLAMATH COUNTY

38 09 29DA
KLAMATH FALLS

THIS MAP WAS PREPARED FOR
RECORDING IN DECEMBER 1984

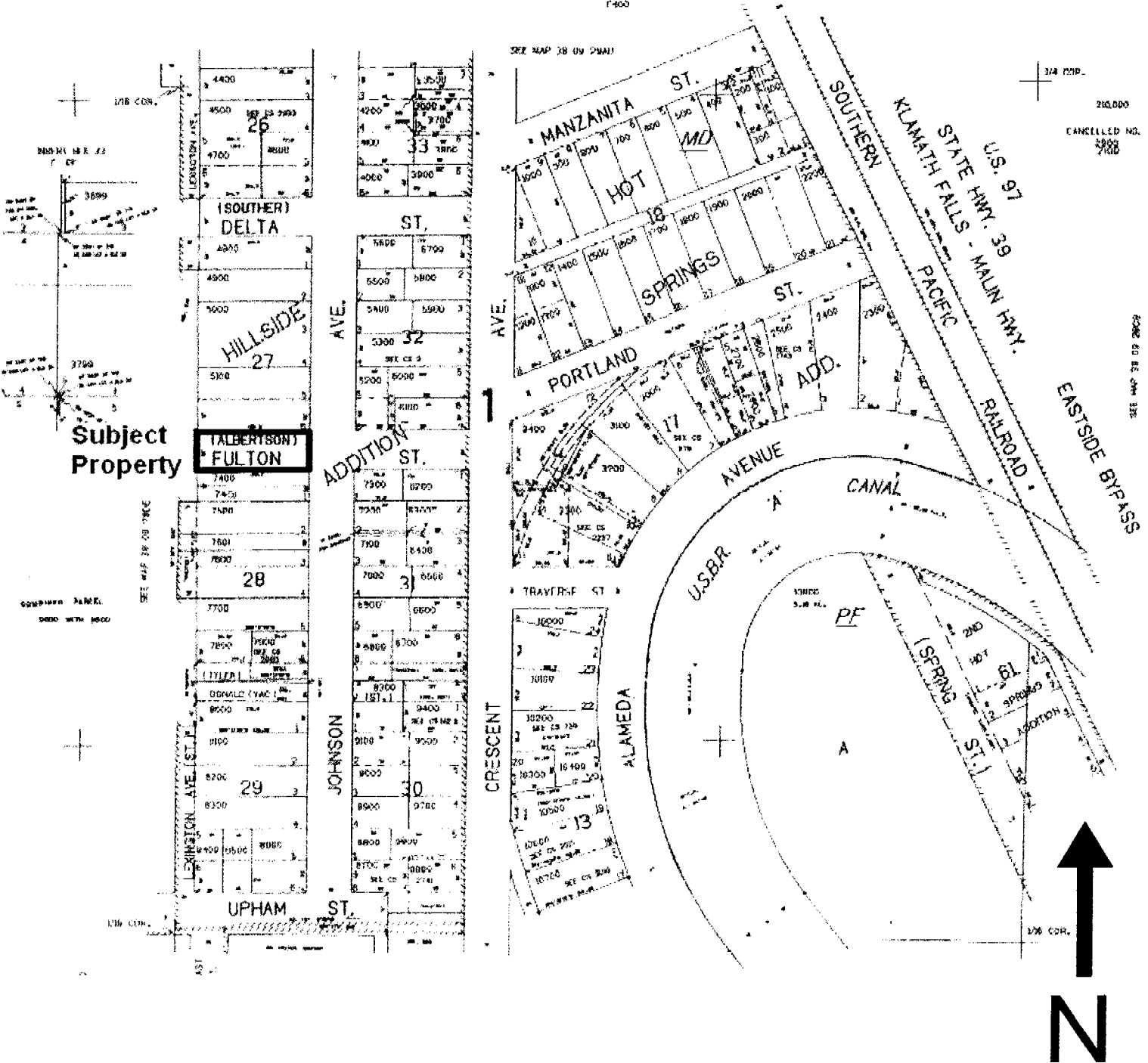


Exhibit B FINDINGS

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: CDO Section 10.515(1) and ORS 271.080 require the applicant to obtain signed petitions of consent from all property owners abutting the proposed vacation and at least two-thirds of property owners in the affected area as defined by ORS 271.080(2). The Applicants have obtained 19 signed consent petitions from property owners in the affected area including two of the three abutting property owners and greater than the required two-thirds of total owners. CDO 13.015 and ORS 271.130 authorize the City Council to initiate vacation proceedings without obtaining the required consent. Council approved Resolution 08-04, initiating the vacation proceedings for the portion of Fulton Street lying west of Johnson Avenue between Block 27 and Block 28 Hillside Addition on March 3, 2008.

Finding: Consent of the owners of the requisite area has been obtained less one adjacent property owner; the application is valid by council authority under ORS 271.080(2). **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 25 adjacent property owners on March 4, 2008 and published in the Herald and News on March 24, 2008.

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: This right-of-way is approximately 182 feet in length by 60 feet wide and is unimproved; containing only native grass and a few trees on the surface. The right-of-way is unlikely to be developed as a street since it has a slope of approximately 20% and the City of Klamath Falls Public Works Engineering Standards allow for a maximum grade of 10% on all new streets, with a minimum landing length of 100 feet, at no greater than 4%. If approved, the adjacent properties to the north and south will equally receive 30 feet of the right-of-way. The cemetery property to the west is not included in the reversion rights to this right-of-way as it was platted in a separate subdivision. The Cemetery does not require nor would it benefit from access on this platted right-of-way.

There is a 2-inch water main with a service line to Lot 6, Block 27 of Hillside Addition (also shown as Tax Lot 5100) and a service line to the Linkville Cemetery on this portion of Fulton Street. As it exists, City Public Works is not in favor of vacating Fulton Street. The City does not have any storm or sanitary sewer infrastructure in this right-of-way. No comments were received from local utility companies to indicate the location of other utilities in this right-of-way. No comments, either for or against, were received from property owners within the notification area.

Finding: The public interest will not be prejudiced by the vacation of said portions of Fulton Street and **this criterion is met with the following conditions:**

1. The Applicants shall be responsible for having the water meters for both Linkville Cemetery and Lot 6, Block 27 of Hillside Addition relocated to the Johnson Avenue right-of-way prior to October 31, 2008.
2. The Applicants shall be responsible for installing a new 2" service line from the relocated meter on Johnson Ave to the existing water connection at Linkville Cemetery prior to October 31, 2008.
3. The Applicants shall be responsible for installing a residential service line from the relocated meter on Johnson Ave to the existing location for water service for Lot 6, Block 27 of Hillside Addition prior to October 31, 2008.
4. The Applicants shall provide language for a 10' wide easement to provide access to the City Cemetery Division for maintenance of the new 2" service line. This easement shall be reserved through the vacation process.
5. To confirm that conditions 1 through 3 have been met, the second reading of the vacation ordinance shall not take place until conditions 1 through 3 have been satisfied and not later than the second Council meeting in November 2008.

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: The vacation of this right-of-way will not eliminate street frontage or required access to any of the lots in the area. This portion of Fulton Street could not be developed to City standards as it is platted.

Finding: The vacation will conform to the Comprehensive Plan and applicable provisions of Chapters 10 to 14 of the CDO and any applicable street plans. **This criterion is met.**

Exhibit C EASEMENT MAP

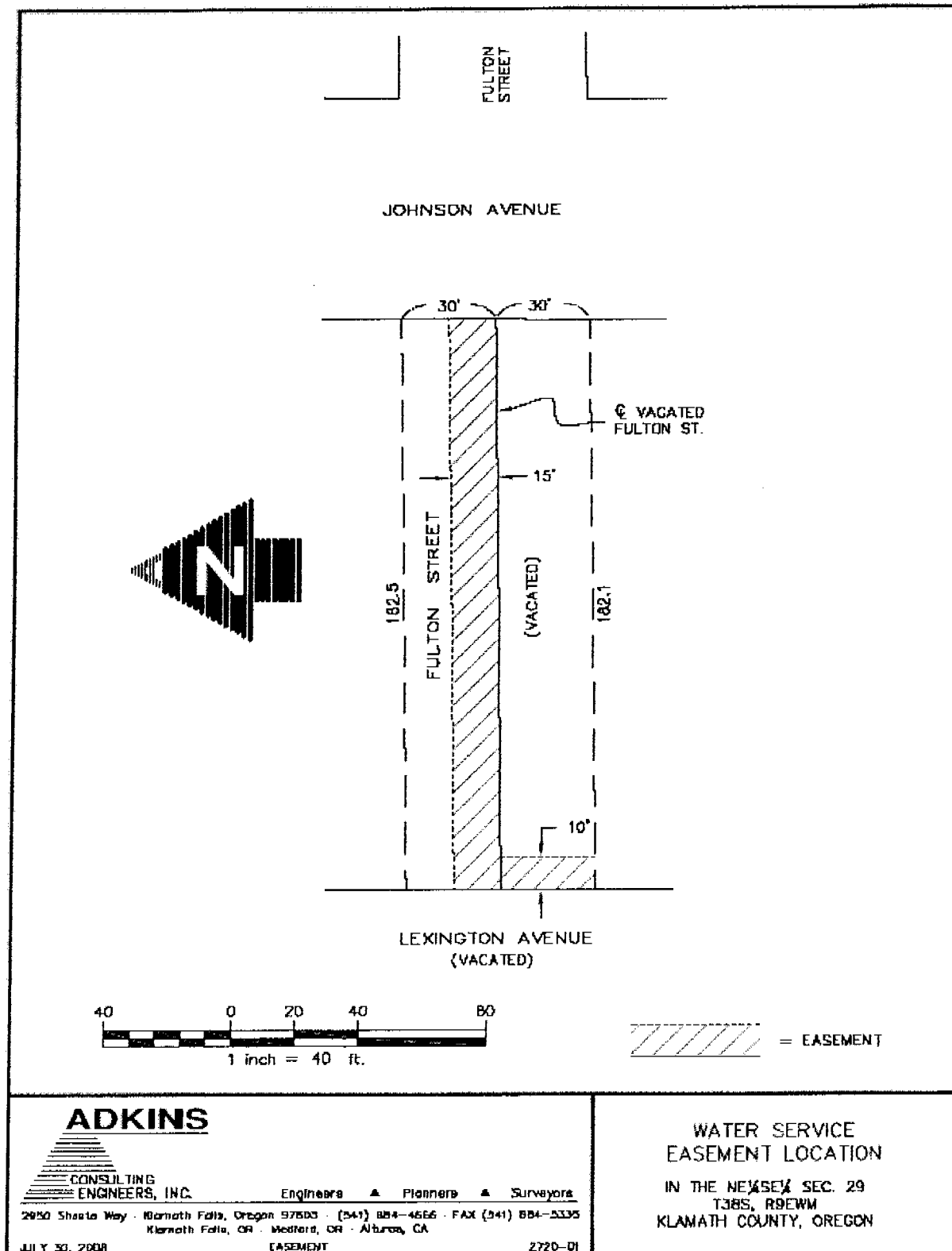


Exhibit D
EASEMENT DISCIPTION

Linkville Cemetery Water Service Line Easement

A strip of land situated in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, Township 38 South Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

The south 15.00 feet of the north half of vacated Fulton Street lying between Johnson Avenue and vacated Lexington Avenue (Vacation ORD. 2148); ALSO INCLUDING the west 10.00 feet of the south half of vacated Fulton Street lying between Johnson Avenue and vacated Lexington Avenue.