



Ordinance No. 10-03

A SPECIAL ORDINANCE VACATING A PORTION OF THE ALLEY RIGHT-OF-WAY, LOCATED BETWEEN SOUTH 6TH STREET AND OWENS STREET, NEAR THE INTERSECTION OF SOUTH 6TH STREET AND EAST MAIN STREET.

WHEREAS, the applicant, Linda Weider, on behalf of Klamath Health Partnership, has submitted a written proposal for vacation of certain real property which is hereinafter described; and

WHEREAS, a public hearing was held on February 22, 2010, 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 April 5, 2010, 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 F; NOW THEREFORE,

THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:

Section 1.

The portion of alley right-of-way, as shown on the maps attached hereto as Exhibits C & E and legally described in Exhibit A, is hereby vacated.

Section 2.

CONDITIONS

1. The applicant shall improve the remaining approximately 152' of alley right-of-way from the vacated portion of the alley to Owens Street before any closure of the portion of alley being vacated herein. This alley portion not being vacated shall be improved in conformance with fire apparatus standards and applicable City engineering standards in effect at the time of the improvements.
2. The applicant shall tie together ("marry") lots 1, 2, 8, 9, 10, 11, 12, and 13 of Block 205 of Mills 2nd Addition through a deed restriction or replat so that the individual sale of any of these lots, or any portion thereof, is prohibited. This shall occur before the earlier of: a) *relinquishment of the public access easement (Easement #1) as described in Section 3 of this ordinance; or b) lapse of one year after final approval of this ordinance.*

Section 3.

EASEMENTS

Easement #1: The City of Klamath Falls hereby reserves a perpetual, exclusive public access easement for the portion of alley right-of-way, as shown in Exhibit C and described in Exhibit A, for the purposes of maintaining public access for vehicles and pedestrians. The owner(s) of Lots 1, 2, 9, 10, 11, and 12 of Block 205 of Mills 2nd Addition shall be responsible for adequately maintaining the alley, in the reasonable discretion of the City, until relinquishment of this easement. This easement shall be relinquished once all three of the following events occurs: a) lots 1, 2, 8, 9, 10, 11, 12, and 13 of Block 205 of Mills 2nd Addition are tied together as described in subsection 2 of Section 2 of this Ordinance; b) the access easement across lot 8, as described in Easement #3 below, is created in favor of the City of Klamath Falls in form and substance reasonably acceptable to the City and is recorded in the deed records of Klamath County; and c) the easement area is physically graded and graveled in accordance with the provisions of Easement #3.

Easement #2: The City of Klamath Falls hereby reserves a perpetual, exclusive utility easement on and under the portion of alley right-of-way, as shown in Exhibit C and described in Exhibit A, for the purposes of installing, inspecting, repairing, maintaining, altering, and operating the City 18" storm water pipe, Avista Utilities facilities, Qwest facilities, and Pacific Power & Light facilities. The owner(s) of Lots 1, 2, 9, 10, 11, and 12 of Block 205 of Mills 2nd Addition shall not erect any buildings or structures, install concrete, plant trees plants or shrubs with deep root systems, or inhibit access to utility facilities within the easement. Lawn areas, plants with shallow root systems, and asphalt/ pavers may be permitted in the reasonable discretion of the City.

Easement #3: The Applicant shall grant to the City of Klamath Falls a perpetual, exclusive easement, for the benefit of the public and located on a portion of lot 8 of Block 205 of Mills 2nd Addition, as shown in Exhibit D and described in Exhibit B, for the purposes of maintaining public access for vehicles and pedestrians using the remaining approximately 152' of alley right-of-way from the vacated portion of the alley to Union Avenue. The Easement shall be in form and substance reasonably acceptable to the City, shall include provisions accommodating possible relocation of the Easement to allow efficient use of lot 8, and shall be recorded in the deed records of Klamath County. The remaining approximately 152' of alley right-of-way, the public access easement across lot 8 as described in this paragraph, and the turning radius

connecting the alley to the easement on lot 8 shall all be in conformance with fire apparatus turning standards and City engineering standards in effect at the time of the improvements.

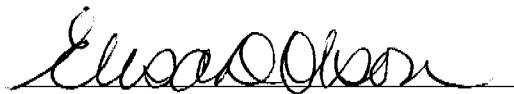
Passed by the Council of the City of Klamath Falls, Oregon, the 19th day of April, 2010.

Presented to the Mayor Pro-tem, approved and signed this 20th day of April, 2010.



Mayor Pro-tem

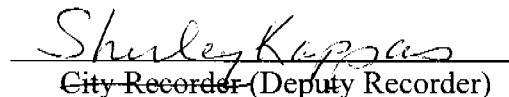
ATTEST:



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 19th day of April, 2010 and therefore approved and signed by the Mayor Pro-tem and attested by the City Recorder.



City Recorder (Deputy Recorder)

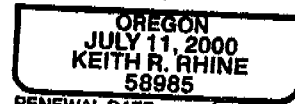
"EXHIBIT A"
LEGAL DESCRIPTION

A portion of the 20' wide alley in Block 205, Mills Second Addition to Klamath Falls, Oregon, situated in the SW1/4 SE1/4 of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, according to the official plat thereof on file in the office of the County Clerk of said Klamath County; said portion of alley being more particularly described as follows:

Beginning at the northwest corner of Lot 9, said Block 205; thence N.00°36'00"W., 20.00 feet to a point on the south line of Lot 2, said Block 205; thence N.89°24'00"E., 148.83 feet, more or less, along the south line of Lot 2 and Lot 1 of said Block 205, to the southwesterly right of way line of South Sixth Street, 80.00 feet wide, (as conveyed to the State of Oregon by deeds recorded May 18, 1943 in Book 158 at Page 410 and recorded September 8, 1943 in Book 158 at Page 281); thence S.55°50'30"E., 35.08 feet, more or less, along said southwesterly right of way line to a point on the north line of Lot 12, said Block 205; thence S.89°24'00"W., 177.65 feet, more or less, along the north lines of Lot 12, 11, 10, and 9 of said Block 205, to the Point of Beginning. Containing 2264.8 square feet more or less, with distances and bearings based on Record of Survey No. 482.



Keith R. Rhine

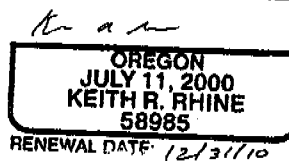


RENEWAL DATE: 12/31/10

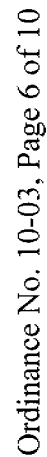
"EXHIBIT B"
ACCESS DESCRIPTION

A portion of Lot 8 in Block 205, Mills Second Addition to Klamath Falls, Oregon, situated in the SW1/4 SE1/4 of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, according to the official plat thereof on file in the office of the County Clerk of said Klamath County; said portion of Lot 8 being more particularly described as follows:

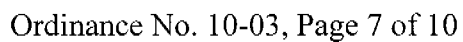
Beginning at the northeast corner of Lot 8, said Block 205; thence S.89°24'00"W., 6.00 feet, along the North line of said Lot 8 to THE POINT OF BEGINNING; thence, leaving said North line and running parallel with the East line of said Lot 8, S.00°36'00"E., 120.00 feet to the South line of said Lot 8; thence S.89°24'00"W., 24.00 feet, along said South line of Lot 8; thence, leaving said South line and parallel with the East line of said Lot 8, N.00°36'00"W., 120.00 feet to a point on the North line of said Lot 8; thence N.89°24'00"E., 24.00 feet, along said North line to the Point of Beginning. Containing 2880 square feet more or less, with distances and bearings based on Record of Survey No. 482.



482



482



REVISED 10-01-08
THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

38 09 33DC
KLAMATH FALLS

1-10-5

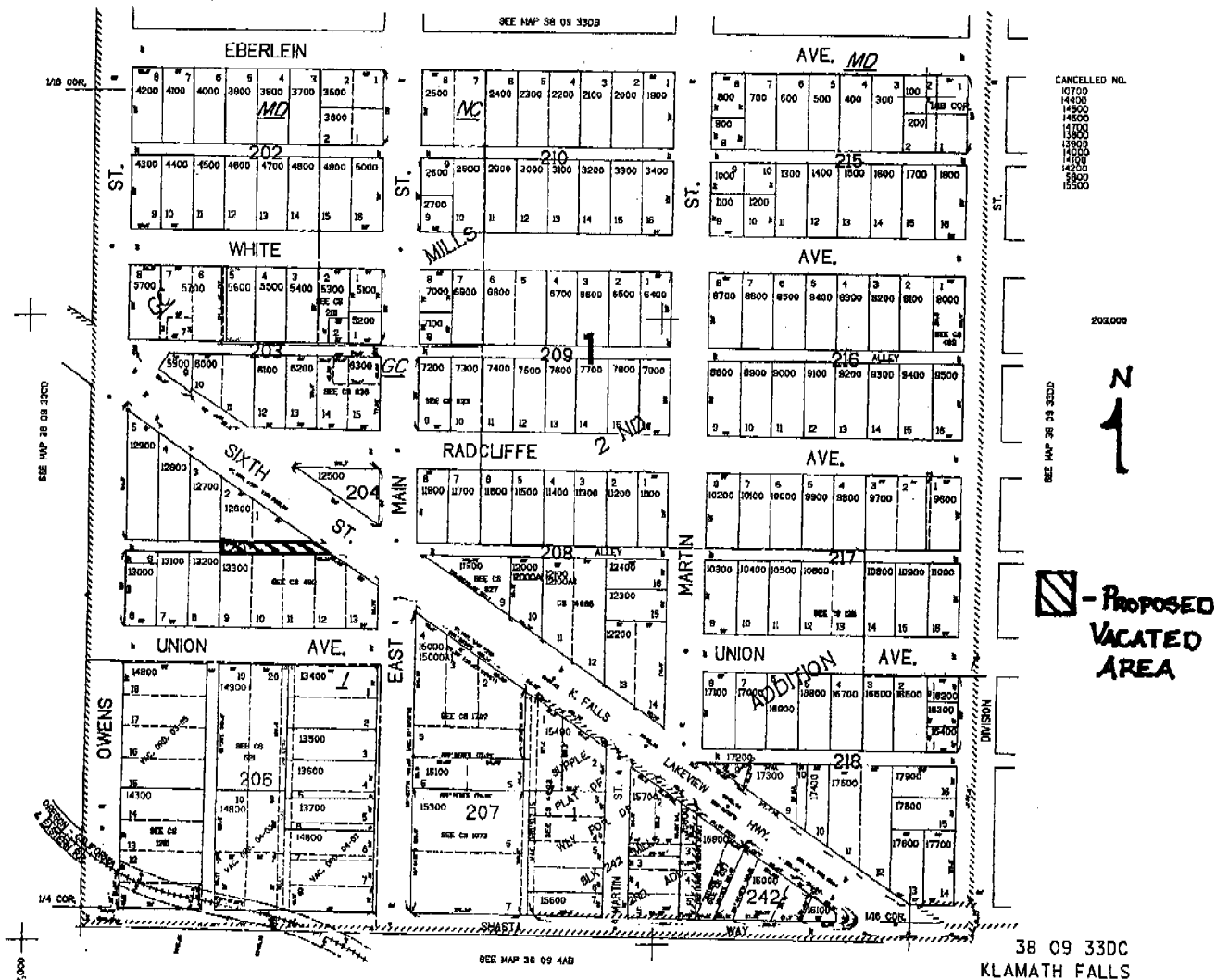


Exhibit F FINDINGS

11.415 Required Findings. Prior to making a recommendation on the proposed change of zone, the Commission shall analyze the following criteria and incorporate such analysis in their decision:

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. The applicant obtained the signatures of all abutting property owners (Klamath Health Partnership and Kathy Sturm) and 74.46% of the surrounding property area as defined by ORS requirements. See the ORS Spreadsheet and Map on page 6 of this Staff Report.

Finding: Consent of the owners of the requisite area has been obtained. **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 16 adjacent property owners on January 16, 2010 and published in the Herald and News on January 31, 2010.

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 section of alley right-of-way proposed for vacation is approximately 178 feet in length along the south right-of-way line and 155 feet in length along the north right-of-way line. This alley right-of-way is 20 feet in width along its entire length. The alley is partially paved and graveled, but is in disrepair. There is a paved apron at the eastern end of the alley near South 6th Street and at the western end of the alley near Owens Street. The remainder of the right-of-way contains broken asphalt and gravel. West bound traffic on South 6th Street is not supposed to enter the alley from South 6th Street. The right-of-way is located between South 6th Street and Union Avenue, south and west of South 6th Street, north of Union Avenue, and east of Owens Street. If approved, the abutting properties will equally receive 10 feet of the right-of-way. The applicant would be required to 'marry' lots 1, 2, 8, 9, 10, 11, 12, and 13 of Block 205 of Mills 2nd Addition together through a deed restriction or record a replat (partition) before closure to the existing portion of alley. This would prevent these lots from being sold separately which would create access issues.

To maintain vehicular access on to two streets and to alleviate fire apparatus turnaround concerns the applicant will be required to create an easement for and pave vehicular access from the remaining portion of alley, across Lot 8, to Union Avenue before closure to the portion of alley proposed for vacation. The applicant will also be required to improve with asphalt the remaining 152' of existing alley before closure to the existing portion of alley.

The City does not have any water, sanitary sewer, or geothermal infrastructure in this right-of-way. The City does have an 18-inch storm water pipe, in the alley, from Owens Street to South 6th Street. According to City Engineering full access is needed for any future maintenance or reconstruction of the storm water pipe. *Avista Utilities, Qwest, and Pacific Power & Light have utility facilities in the alley and require an access easement if the alley is vacated. To maintain the City 18" storm water pipe and the other facilities the applicant will be required to create a 20' wide easement the proposed vacated length of the alley before closure to the existing portion of alley.* Within the easement the applicant will only have the capacity to install lawn, plants with shallow root systems, and only use asphalt or pavers. The use of concrete, trees, and plants/shrubs with deep root systems will not be permitted as they create problems for access to and maintenance of the utilities within the easement.

Charter Communications was given opportunity to comment regarding the proposed vacation, but no comments were received.

Letters of opposition from Linda Gresdel and Linden Smith were received by the Planning Division and are reflected on pages 19 through 24 of this Staff Report.

Finding: Closure of the portion of the alley proposed for vacation would only be allowed in conjunction with improvements to the existing alley, the creation of a utility easement across the vacated portion of the alley, the marrying of 8 lots in Block 205 through deed restriction or replat, and the creation of an improved vehicular access through Lot 8 by recording an access easement and installation of asphalt. The public interest will not be prejudiced by the vacation of this right-of-way if the previous conditions are imposed. **This criterion is met with conditions.**

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 would eliminate an access point on S. 6th Street, an arterial street in the City. This is in conformance with Comprehensive Plan Policy 139 which states that arterial streets should have limited access points.

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