

AN ORDINANCE VACATING THAT PORTION OF LINN AVENUE NE BETWEEN ALCO STREET AND BURKHART STREET, IN ALBANY, OREGON; AND ADOPTING FINDINGS.

WHEREAS, on June 25, 2008, the Albany City Council directed staff to initiate the vacation of this portion of right-of-way (File VC-02-08); and

WHEREAS, notices of public hearing were mailed, posted, and published as required by state and local law; and

WHEREAS, the Albany Planning Commission held a public hearing on August 11, 2008; and

WHEREAS, the Albany Planning Commission recommended that the City Council approve the proposed vacation; and

WHEREAS, the Albany City Council held a public hearing on August 27, 2008, and;

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

Section 1: Subject Property. The portion of Linn Avenue NE right-of-way between Alco Street and Burkhart Street (see legal descriptions on attached Exhibit A and map labeled Exhibit B) is hereby vacated.

Section 2: Findings. The Findings, Conclusions, and Conditions in the Staff Report attached as Exhibit C are hereby adopted in support of this decision.

Section 3: Public Utility Easement Retained. The City retains a public utility easement over the entire vacated area. The easement will benefit the City, their successors, assigns, authorized agents, and/or contractors.

Section 4: Access Easement Retained. An access easement is retained over the westernmost 50 feet of the southern half of the area being vacated. This access easement is for the benefit of that tract of land described as Lot 2, Block 8, of the Burkhart Park Addition subdivision.


Section 5: Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of this city of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council.

Section 6: The City Recorder shall, within 10 days of the effective date of this ordinance, file a certified copy of the ordinance with the County Clerk, County Assessor, and County Surveyor. The petitioner for the vacation shall bear the recording costs.

Passed by Council: August 27, 2008

Approved by Mayor: August 27, 2008

Effective Date: August 27, 2008



Mayor

ATTEST:

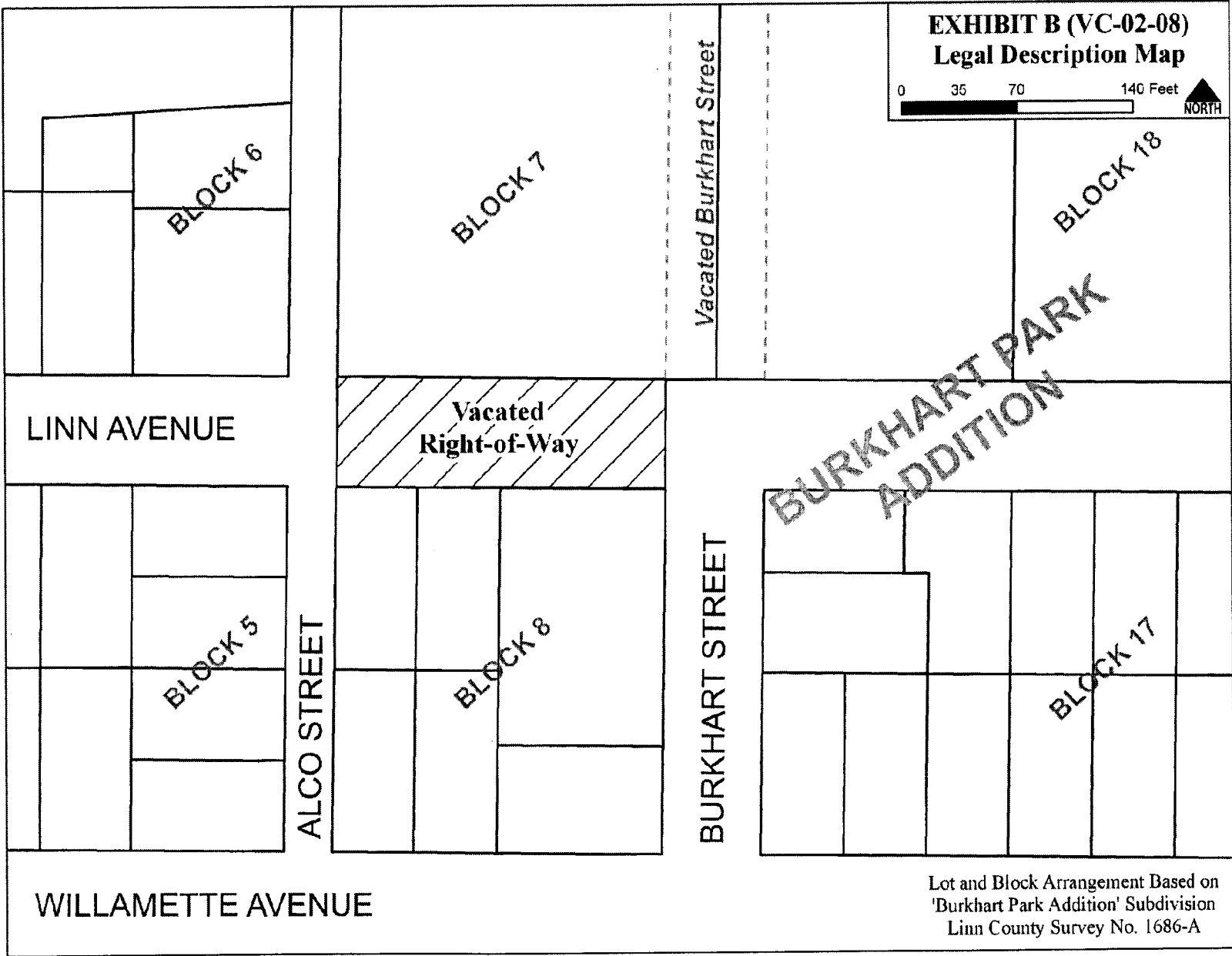

City Clerk

EXHIBIT A

Right-of-Way Vacation VC-02-08

A tract of land located in the northeast one-quarter of the southwest one-quarter of Section 5, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, that consist of:

ALL of that right-of-way of Linn Avenue located between the Alco Street right-of-way and the Burkhart Street right-of-way; also described as lying between Block 7 and Block 8 of the Burkhart Park Addition subdivision; said right-of-way being 66 feet in width.





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Community Development Department

STAFF REPORT Vacation

| | |
|--------------------------------|--|
| <u>HEARING BODY</u> | CITY COUNCIL |
| <u>HEARING DATE</u> | Wednesday, August 27, 2008 |
| <u>HEARING TIME</u> | 7:15 p.m. |
| <u>HEARING LOCATION</u> | Council Chambers, Albany City Hall, 333 Broadalbin Street SW |

GENERAL INFORMATION

| | |
|---------------------------|---|
| DATE OF REPORT: | August 20, 2008 |
| FILE: | VC-02-08 |
| TYPE OF APPLICATION: | Vacation of Public Right-of-Way (Linn Avenue between Alco Street and Burkhart Street) |
| REVIEW BODY: | City Council |
| STAFF REPORT PREPARED BY: | Mike Leopard |
| PROPERTY OWNER: | Public Right-of-Way |
| APPLICANT: | City of Albany – Parks and Recreation Department |
| APPLICANT REP: | Craig Carnagey |
| ADDRESS/LOCATION: | Linn Avenue, between Alco Street and Burkhart Street |
| MAP/TAX LOT: | Linn County Assessor's Map No. 11S-03W-05CA (south of Tax Lot 1200) |
| TOTAL LAND AREA: | 0.30 acres |
| EXISTING LAND USE: | Unimproved public right-of-way |
| NEIGHBORHOOD: | Willamette |
| SURROUNDING ZONING: | RM (north); RS-5 (south) |
| SURROUNDING USES: | Single Family Residential (south, west, and east); Undeveloped (north) |

NOTICE INFORMATION

A notice of public hearing was mailed to affected property owners on August 1, 2008. The site was posted on July 31, 2008, in accordance with Section 1.410 of the Albany Development Code. Two legal notices were published in the *Albany Democrat-Herald* on July 29, 2008, and August 4, 2008, in accordance with Oregon Revised Statute (ORS) 271.110. At the time this staff report was completed (August 20, 2008), the Albany Planning Division had received no written comments.

STAFF RECOMMENDATION

APPROVAL with CONDITIONS of this Vacation application for Linn Avenue, between Alco Street and Burkhart Street. The proposed conditions are found in this staff report.

PLANNING COMMISSION RECOMMENDATION

At a public hearing held on August 11, 2008, the Albany Planning Commission voted unanimously to recommend APPROVAL WITH CONDITIONS of this Vacation application for that portion of the Linn Avenue NE right-of-way that lies between Alco Street and Burkhart Street (File VC-02-08). The proposed conditions are found in this staff report.

CITY COUNCIL DECISION

MOTION TO APPROVE

If the findings in the staff report adequately address testimony presented at the public hearing, the City Council may approve the application based on the findings and conclusions of the staff report.

I MOVE that the City Council APPROVE WITH CONDITIONS the application that would result in the vacation of a portion of the Linn Avenue NE right-of-way between Alco Street and Burkhart Street (File VC-02-08). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

MOTION TO DENY

If the City Council determines that there is insufficient evidence to demonstrate that the review criteria have been met, the City Council may deny the application.

I MOVE that the City Council DENY the application for the vacation of a portion of the Linn Avenue NE right-of-way between Alco Street and Burkhart Street (File VC-02-08).

APPEALS

Within five days of final action on this application, the Community Development Director will provide written notice of the decision to the applicant and any other parties entitled to notice.

A decision of the City Council may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal not later than 21 days after the decision becomes final [Ord. 5446; Ord. 5475].

STAFF ANALYSIS

Vacation File VC-02-08

OVERVIEW

The City of Albany Parks and Recreation Department owns the parcel north of the proposed vacation. A neighborhood park is being proposed for this parcel. The Parks Department wishes to utilize a portion of this right-of-way as part of the park development.

At the June 25, 2008, City Council meeting, the Council agreed to initiate the vacation application. The affected property owners received notice of the proposed vacation and associated public hearings, and were given the opportunity to comment.

The Albany Development Code (ADC) contains the following review criteria which must be met for this application to be approved. Code criteria are written in *bold italics* and are followed by findings and conclusions.

- (1) *The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan city transportation or public facility plan.*

FINDINGS OF FACT

- 1.1 The following Comprehensive Plan policies have been identified as relevant to this review criterion:

GOAL 11: Public Facilities and Services

- a. Prohibit the construction of structures over public water lines and easements.
 - b. Prohibit the construction of structures over drainage improvements and easements.
 - c. Prohibit the construction of structures over public wastewater lines and easements.
- 1.2 Sanitary Sewer. City utility maps show that currently no public sanitary sewer mains exist within the area proposed for vacation. Lots on the south side of this portion of Linn Avenue are served by a public sanitary sewer main that runs along their back (south) property boundaries.
- 1.3 Sanitary Sewer. In an effort to provide better access to public sewer facilities, and to minimize the infringement on property owners, the City will periodically replace “back lot-line” sewer mains with public mains that lie within public rights-of-way. To allow for the possible relocation of the “back lot-line” sewer main south of Linn Avenue to the Linn Avenue right-of-way, a public utility easement will be retained over the area to be vacated.
- 1.4 Water. City utility maps show that currently no public water mains exist within the area proposed for vacation. Lots on the south side of this portion of Linn Avenue are served by public water mains in Alco Street and Burkhart Street.
- 1.5 Water. The City’s Engineering Division indicates that there may be a need for a future public water main in Linn Avenue within the area proposed for development. In order to allow for this potential future water main extension, a public utility easement will be retained over the area to be vacated.
- 1.6 Storm Drainage. City utility maps show no public storm drainage facilities within this portion of Linn Avenue. The right-of-way is not improved and is not open to traffic.
- 1.7 Other Utilities. City staff has contacted the various franchise utility providers about the proposed right-of-way vacation. We received no response from the franchise utilities; therefore it is assumed that no franchise utilities exist within the area to be vacated.
- 1.8 Transportation. The Linn Avenue right-of-way proposed for vacation is located between Alco Street and Burkhart Street and is classified as a local street. This portion of Linn Avenue is not improved to city standards and is not currently open to traffic.
- 1.9 Transportation. Albany’s Transportation System Plan does not identify this portion of Linn Avenue as being part of the city’s arterial/collector street system.

CONCLUSIONS

- 1.1 Retaining a public utility easement over the entire right-of-way to be vacated will allow for the installation of public utilities within this area if needed in the future.
- 1.2 The proposed vacation does not conflict with Albany’s Transportation System Plan.

CONDITION

1.1 The City will retain a public utility easement over the entire area to be vacated. This easement will allow legal access to the area for any needed future public utilities, and will prohibit the construction of any permanent structures within this easement.

(2) *The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.*

FINDINGS OF FACT

2.1 If Linn Avenue is vacated, each parcel along the right-of-way will receive that portion of the area along its frontage out to the centerline of the right-of-way.

2.2 Four lots adjoin the right-of-way proposed for vacation; the park development proposed on the north side of the right-of-way, and three residential lots on the south side of the right-of-way.

2.3 The easterly residential lot is developed with a single-family home and has frontage on, and takes access from, Burkhart Street. The proposed vacation will not impact access to this lot.

2.4 The center residential lot (Tax Lot 11S-03W-05CA; 01303) is developed with a single-family home and has street frontage only on the portion of Linn Avenue proposed for vacation. The home has an existing driveway that extends over the adjoining parcel to the west out to Alco Street. The proposed vacation would not affect the home's current driveway access, but it would eliminate all direct right-of-way frontage for the lot. If the adjoining parcel to the west was ever developed, the parcel with the existing home could end up land locked, unless provisions are made now to provide alternate access to the lot.

2.5 The westerly residential lot (Tax Lot 11S-03W-05CA; 01300) is not developed, has frontage on Alco Street, and is under common ownership with the center lot. The proposed vacation will not impact access to this western lot.

CONCLUSION

2.1 In order to assure that Tax Lot 1303 continues to have approved access to Alco Street after this portion of Linn Avenue is vacated, an access easement must be retained over the portion of the vacated right-of-way that fronts Tax Lot 1300.

CONDITION

2.1 A shared access easement must be retained over the 33 feet of Linn Avenue right-of-way that will revert back to Tax Lot 1300. This access easement will be for the benefit of Tax Lot 1303.

(3) *The requested vacation will not have a negative effect on traffic circulation or emergency service protection.*

FINDING OF FACT

3.1 The right-of-way proposed for vacation is not currently open to traffic. Because it is unlikely that the street would ever be improved to city standards and opened to traffic, vacating the right-of-way will not have a negative effect on traffic circulation or emergency service protection.

CONCLUSION

3.1 The requested vacation will not have a negative effect on traffic circulation or emergency vehicle access to the area.

(4) *The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.*

FINDINGS OF FACT

- 4.1 The right-of-way to be vacated will be incorporated into the parcels directly abutting it, or revert back to the owners of the properties from which the right-of-way was dedicated. The area to be vacated was initially dedicated as public right-of-way with the Burkhart Park Addition subdivision plat. Half (33 feet) of the right-of-way will revert back to the parcels adjacent to those sections along the property frontages. This property distribution is shown on Staff Report Attachment D.
- 4.2 The area proposed for vacation would not become part of the adjacent properties "front yard" setback, and therefore will not require additional landscaping, etc.
- 4.3 As detailed under Review Criterion 2, an access easement over the portion of the vacated right-of-way adjacent to Tax Lot 1300 must be provided in order to maintain legal access to a public street for Tax Lot 1303.
- 4.4 Because the right-of-way proposed for vacation is not open to traffic, there would not need to be reconstruction of an access for emergency vehicles.

CONCLUSIONS

- 4.1 No additional landscaping will be necessary if the areas are vacated, because the property adjacent to the vacated areas will no longer be considered "front yards" for the adjacent parcels.
- 4.2 An access easement over the section of vacated right-of-way that will revert back to Tax Lot 1300 must be provided for the benefit of Tax Lot 1303.

CONDITION

- 4.1 A shared access easement must be retained over the 33 feet of Linn Avenue right-of-way that will revert back to Tax Lot 1300. This access easement will be for the benefit of Tax Lot 1303.
- (5) *The public interest, present and future, will be best served by approval of the proposed vacation.***

FINDINGS OF FACT

- 5.1 The existing right-of-way is not currently open to traffic. Vacating the right-of-way will not change traffic patterns in this area.
- 5.2 The vacation of this right-of-way will allow for the construction of a city park on property to the north. This park will include a sidewalk/path through the north portion of the vacated area that will allow bike and pedestrian traffic to travel from Alco Street to Burkhart Street.
- 5.3 The existing trees and vegetation within this area are more likely to be preserved if the area is vacated and a park is developed on a portion of the property.

CONCLUSION

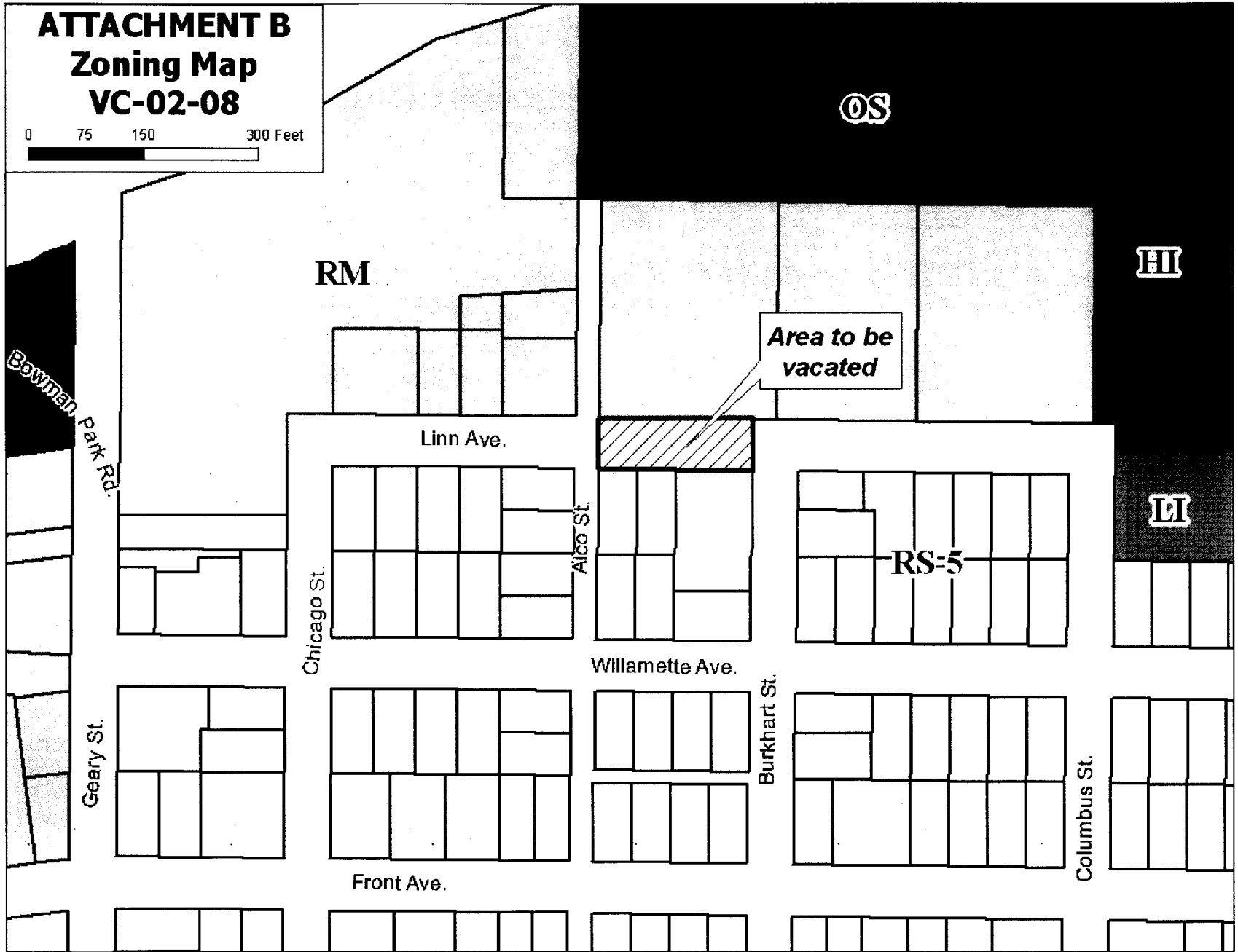
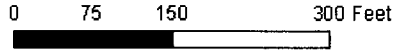
- 5.1 Development of the site as a park will result in access for bike and pedestrian traffic within this area, where none existed before.

ATTACHMENT A
Location Map
VC-02-08

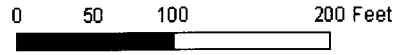
0 75 150 300 Feet



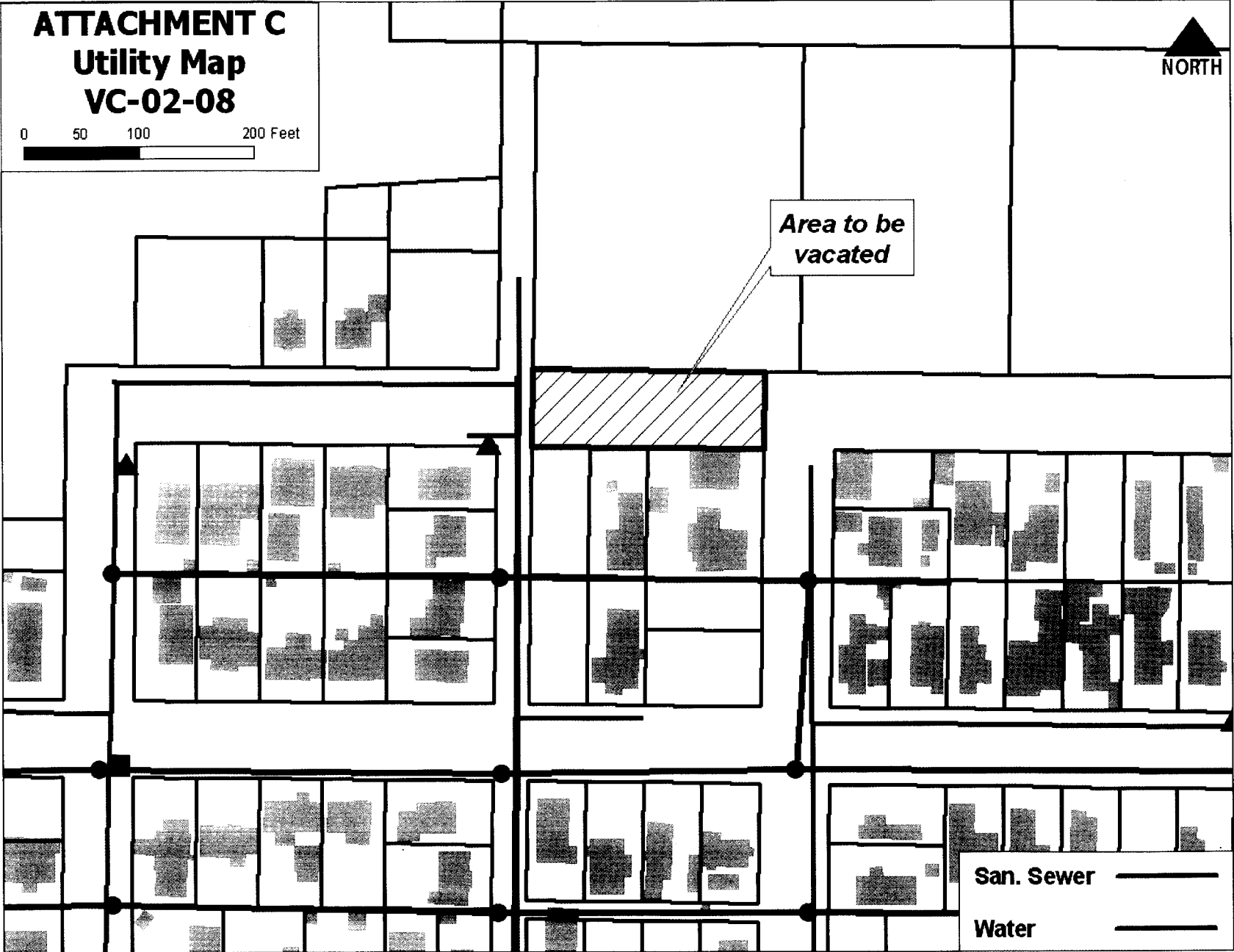
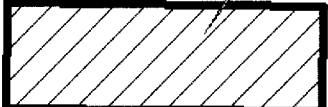
ATTACHMENT B
Zoning Map
VC-02-08



ATTACHMENT C
Utility Map
VC-02-08



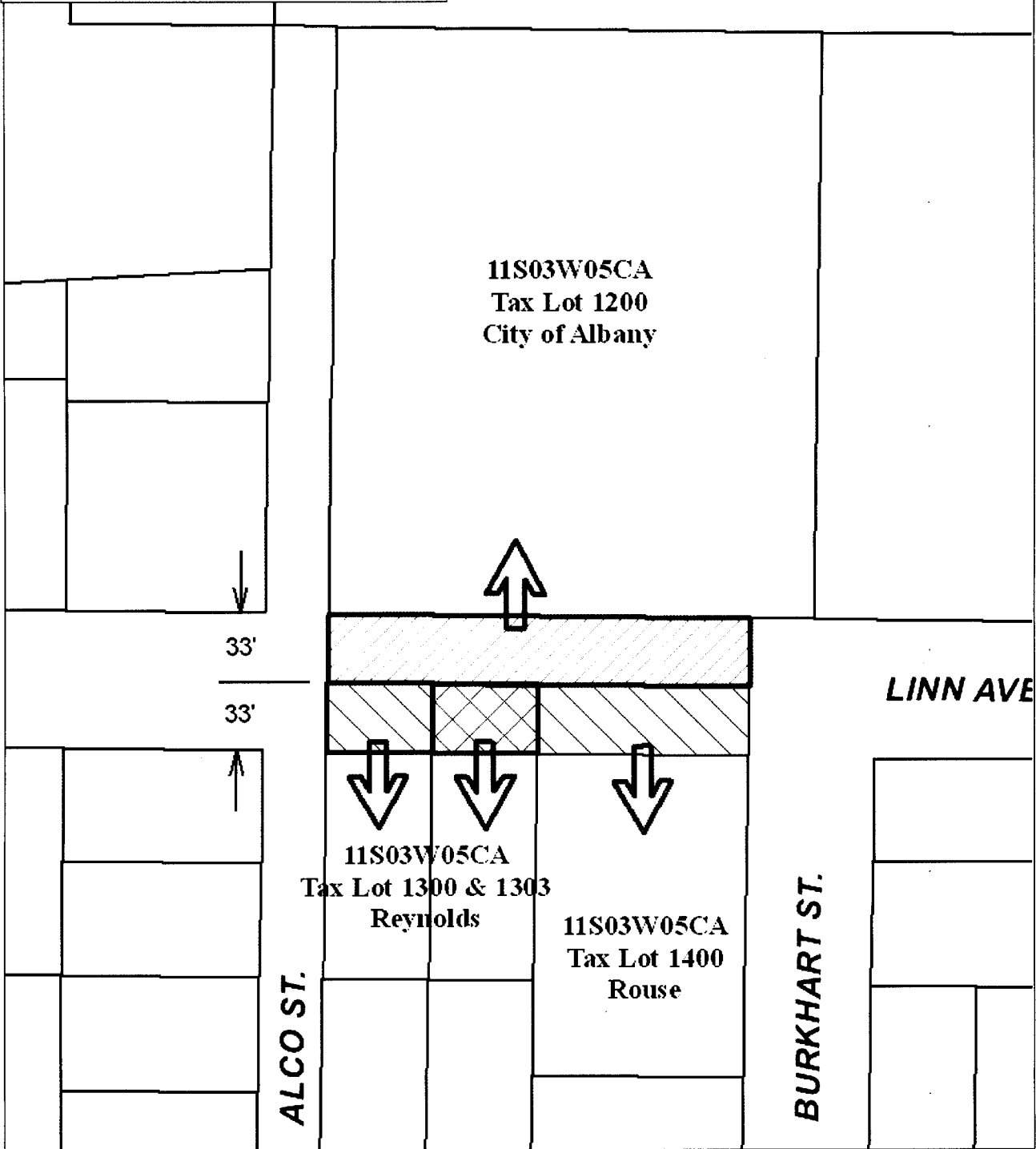
Area to be vacated



San. Sewer ————
Water ————

ATTACHMENT D
Property Distribution Map
VC-02-08

0 30 60 120 Feet





August 31, 2008

CITY HALL

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PO Box 100
Albany, OR 97321

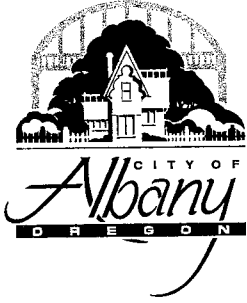
Enclosed you will find a certified copy of City of Albany Ordinance No. 5702, which vacated a portion of Linn Avenue NE between Alco Street and Burkhart Street, in Albany, Oregon.

This ordinance is being recorded with the Linn County Recorders Office, but the City wanted to make sure you received a copy as well.

Sincerely,

Betty Langwell, CMC
City Clerk

Enclosure



August 31, 2008

Linn County Assessor, Room 215
Linn County Court House
PO Box 100
Albany, OR 97321

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