

**AGENDA**

**WILSONVILLE CITY COUNCIL MEETING  
MARCH 3, 2014  
7:00 P.M.**

**CITY HALL  
29799 SW TOWN CENTER LOOP  
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr  
Councilor Susie Stevens

Councilor Richard Goddard  
Councilor Julie Fitzgerald

**CITY COUNCIL MISSION STATEMENT**

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

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**Executive Session is held in the Willamette River Room, City Hall, 2<sup>nd</sup> Floor**

- |                  |   |           |
|------------------|---|-----------|
| <b>5:00 P.M.</b> | <b>EXECUTIVE SESSION</b>  | [15 min.] |
| A.               | Pursuant to ORS 192.660(2)(f) Exempt Public Records<br>ORS 192.660(2)(h) Litigation |           |
| <b>5:15 P.M.</b> | <b>REVIEW OF AGENDA</b>   | [5 min.]  |
| <b>5:20 P.M.</b> | <b>COUNCILORS' CONCERNS</b>   | [5 min.]  |
| <b>5:25 P.M.</b> | <b>PRE-COUNCIL WORK SESSION</b>   |           |
| A.               | Wayfinding Update - Neamtzu   | [15 min.] |
| <b>6:50 P.M.</b> | <b>ADJOURN</b>  |           |
- 

**CITY COUNCIL MEETING**

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, March 3, 2014 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on February 25, 2014. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

- |                  |  |
|------------------|--|
| <b>7:00 P.M.</b> | <b>CALL TO ORDER</b>   |
| A.               | Roll Call  |
| B.               | Pledge of Allegiance   |
| C.               | Motion to approve the following order of the agenda and to remove items from the consent agenda. |

**7:05 P.M. MAYOR'S BUSINESS**

- A. Upcoming Meetings

**7:10 P.M. COMMUNICATIONS**

- A. Robotics Team "1425 Error Code Xero Robotics" Update – Kyla Minato

**7:15 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

**7:20 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS**

- A. Council President Starr – (*Park & Recreation Advisory Board Liaison*)
- B. Councilor Goddard – (*Library Board Liaison*)
- C. Councilor Fitzgerald – (*Development Review Panels A & B Liaison*)
- D. Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*)

**7:35 P.M. PUBLIC HEARING**

- A. **Ordinance No. 736** – 1<sup>st</sup> Reading  
An Ordinance Of The City Of Wilsonville Declaring And Authorizing The Vacation Of Three (3) Portions Of SW 110<sup>th</sup> Avenue Public Street Right Of Way Between SW Mont Blanc Street And SW Tooze Road/SW Boeckman Road In Villebois Legally Described In Attachment C. (Staff – Pauly)

**7:50 P.M. NEW BUSINESS**

- A. Set the hearing date appeal of the denial of the Human Bean application by the Development Review Board Panel "A" for March 17, 2014. The appeal is limited to the record and additional testimony and evidence on the following issues and related development code provisions:
- On-site traffic congestion;
  - Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles; and
  - Section 4.154, Subsections 4.155(.03)A., 4.400(.02)A., and 4.421(.01)C.

**8:15 P.M. CITY MANAGER'S BUSINESS**

**8:20 P.M. LEGAL BUSINESS**



2/24/2014 10:14 AM Last Updated

**8:25 P.M.      ADJOURN**

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated. The Mayor will call for a majority vote of the Council before allotting more time than indicated for an agenda item.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:-Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or [king@ci.wilsonville.or.us](mailto:king@ci.wilsonville.or.us)


**CITY COUNCIL WORKSESSION  
 STAFF REPORT**

<b>Meeting Date:</b>  March 3, 2014		<b>Subject:</b> Citywide Signage and Way finding Plan  <b>Staff Member:</b> Chris Neamtzu, Planning Director <b>Department:</b> Community Development	
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable <b>Comments:</b>	
<b>Staff Recommendation:</b> The Council should discuss the benefits of a citywide signage and way finding program and provide Staff with direction on the next steps.			
<b>Recommended Language for Motion:</b> N/A			
<b>PROJECT / ISSUE RELATES TO:</b> <i>[Identify which goal(s), master plans(s) issue relates to.]</i>			
<input checked="" type="checkbox"/> Council Goals/Priorities Economic Development -strategic branding -filling vacant storefronts	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:**

At the January 23, 2014, Council meeting, under citizen input, Planning Commissioner Ben Altman presented his thoughts regarding the creation of a citywide signage and way finding program. The Council directed the City Manager to have staff return with more information on project scope, timeline and resources needed.

**EXECUTIVE SUMMARY:**

Way finding signage can be an important part of a community's identity and can be a valuable addition to a city's landscape. A comprehensive way finding program can promote a better



visitor experience and improve traffic patterns by providing essential information that people need to find destinations and districts throughout a City. One of the main purposes of such a program is to create comprehensive and consistent identification necessary to help visitors find their destination.

Successful way finding provides needed information at an appropriate scale without resulting in clutter or excessive maintenance. Thoughtful design and placement is critical in implementing a successful program. Way finding signage typically includes a community created thematic look which is comprised of color palettes, fonts, logos, graphics, materials, architectural designs and other identifying features such as street furniture and lighting that support and complement the identity of a community.

Community way finding is based around the dynamics of the visitor experience as people enter the City, orient themselves and find their destinations. To be successful, the signs need to address different user groups, motor vehicles, cyclists and pedestrians. Each category needs to be tailored to the needs of the user, appropriately placed and scaled to be effective.

The City Council has identified several goals related to economic development, specifically developing strategic branding with a visual identity plan and logo, filling vacant storefronts and promoting tourism. Developing a signage and way finding plan align well with these other endeavors.

The signage and way finding system is also included as a recommendation in the recently developed draft Tourism Development Strategy. Recommendation 3.7 states: ***Develop and implement a comprehensive way finding system. The need for improved signage and way finding was identified in interviews and workshops. In addition to providing clear directions, signage is important for way finding, identity and the creation of attractions linking venues to form coherent and attractive trails and touring routes. This should be conducted after the brand strategy is completed (emphasis added).*** Recommendation 3.8 states: ***Develop a comprehensive signage strategy for the city. A comprehensive signage strategy is required to address directional signage issues in addition to more localized way finding, including the provision of quality, effective temporary signage for events.***

Staff recommends that the current tourism development effort and the strategic branding plan be completed **before** the City embarks on the creation of a signage and way finding program. A signage and way finding program can build on the momentum and community effort created through the Council's identity and branding goals. Way finding signage could incorporate the various creative elements developed through the community-branding process.

If the Council agrees that this project is a priority, Staff could be directed to include a new project in the FY 14-15 proposed city budget to fund the consultant work necessary to create the plan. Staff would need time to scope the project to determine the appropriate amount to budget.

#### **EXPECTED RESULTS:**

Creation of a community-wide signage and way finding program will result in an enhanced visitor experience while promoting community identity.



**TIMELINE:**

The timeline depends on the completion of the strategic branding plan and funding the project. Once these items are complete, consultants selected and scope of work defined, the project would take approximately 4-6 months.

**CURRENT YEAR BUDGET IMPACTS:**

There is currently no adopted budget for this project. Once underway, Staff time would be required to manage consultants, create work products and coordinate the public involvement process.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: \_\_\_\_\_JEO\_\_\_\_\_ Date: \_\_\_\_2/21/14\_\_\_\_\_

As stated above, there is no budget at this time. Budget may need to be added to cover future potential projects.

**LEGAL REVIEW / COMMENT:**

Reviewed by: \_MEK\_\_\_\_\_ Date: 2/19/2014\_\_\_\_\_  
N/A

**COMMUNITY INVOLVEMENT PROCESS:**

The specifics of the community involvement process would be defined in a scope of work. Staff recommends that a citizen committee be involved to guide the process. Membership could be comprised of a subset of participants from the Tourism Task Force and upcoming branding effort.

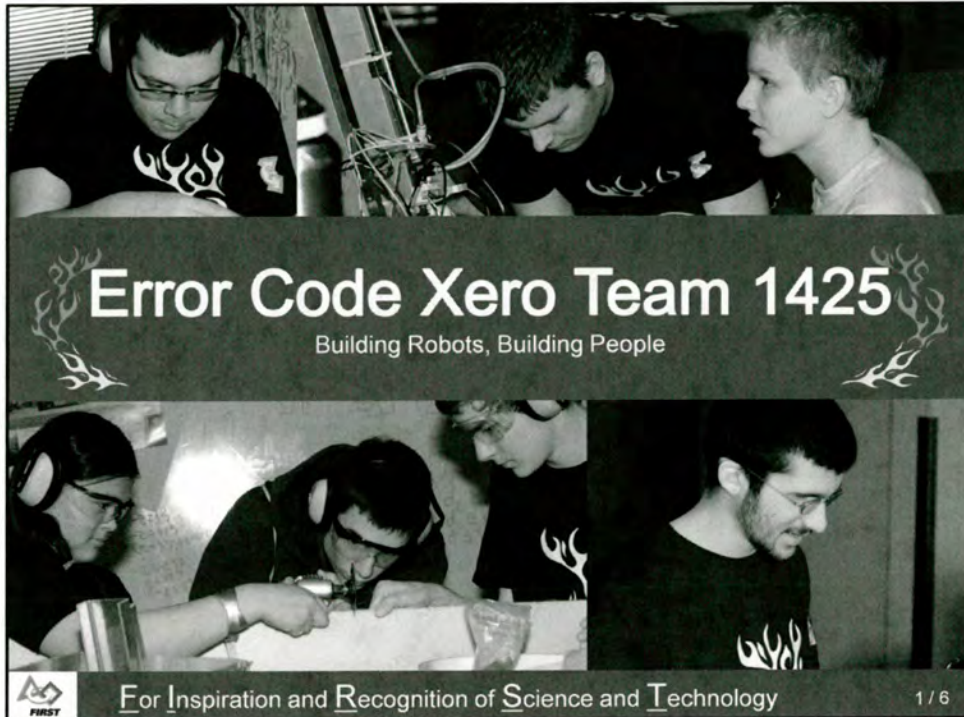
**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups): Creation of a signage and way finding program would be beneficial to visitors of the community and the businesses that rely on them.

**ALTERNATIVES:**

Do nothing at this time.

**CITY MANAGER COMMENT:**





## FIRST Robotics District Event @ Wilsonville High School

- Friday, March 21st- Saturday, March 22nd
- 32 teams
- 1000+ people visiting the city of Wilsonville including volunteers, students, mentors, and families.
- Volunteers needed.



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2 / 6

Thank you for your generous donation from last year to Team 1425, with the money we were able to have a great 2013 season.

That donation was very significant to our team's performance last year and we would greatly benefit from another contribution this year.

This season we will be hosting a large district event at Wilsonville High School on March 21st and 22nd. This event will include 32 teams

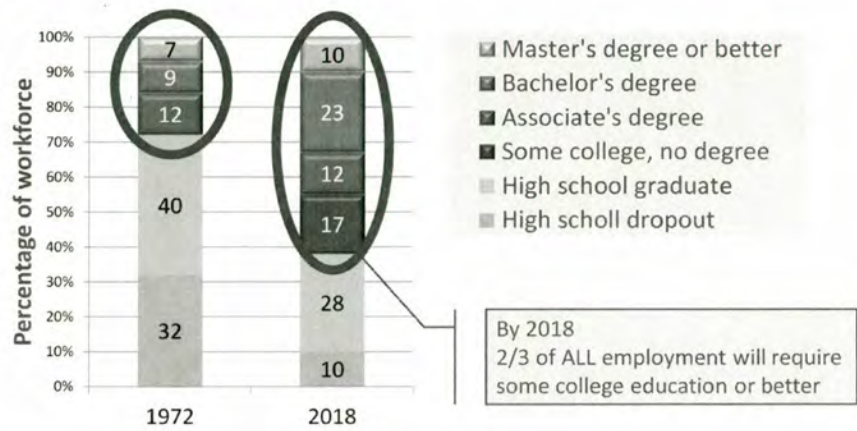
The district event will bring approximately 1000 people into the city of Wilsonville, which will be beneficial to local restaurants, hotels, and stores.

We are still in search of more volunteers to help at the district event

Kyla will be telling you about how FIRST supports high schoolers and prepares them for college , giving them a taste of the real world business, product, and startup environments.



# Jobs Need Higher Education

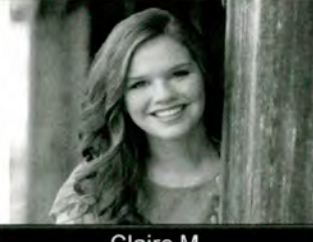


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## Team 1425 Alumni Examples



Dane B.  
Nat'l Robotics Engineering Center



Claire M.  
Yale Engineering Student



Cameron D.  
OSU student

Ross  
Sandia Nat'l Laboratories Engineer



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4 / 6



## Vision Match

 <h3>Quality Education</h3> <ul style="list-style-type: none"> <li>• Hands on, real life experience</li> <li>• Interact with mentors from different fields of work</li> </ul>	 <h3>Fiscal Discipline</h3> <ul style="list-style-type: none"> <li>• Budget for building, travel, etc.</li> <li>• Fundraising throughout the year</li> </ul>
 <h3>Community Amenities &amp; Recreation</h3> <ul style="list-style-type: none"> <li>• Mentoring Younger teams</li> <li>• Parades, WERK day, etc.</li> </ul>	 <h3>Welcoming, Engaged and Satisfied Residents</h3> <ul style="list-style-type: none"> <li>• Mentor Graphics and Xerox</li> <li>• Help host, fund and give time to FIRST teams</li> </ul>
 <h3>Economic Development</h3> <ul style="list-style-type: none"> <li>• New district event at Wilsonville High School in March</li> <li>• Will bring 1000+ people to Wilsonville               <ul style="list-style-type: none"> <li>• Hotels, restaurants and stores</li> </ul> </li> </ul>	

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5 / 6

Hi, I'm Maddie Finklea, I'm a Junior at Wilsonville high school and I joined robotics because of my interest in marketing and design.

Here we connected the some of the city's goals for this year with ours and some of the things we do with them.

You strive to bring more quality education to schools, we are a product of that. You learn things on a FIRST team that you wouldn't learn in a classroom. You get hands on, real life experiences and get to interact with mentors from many different fields of work.

Like you, we have to stay within a budget with building and travel expenses. Throughout the year we fundraise to make sure we are able to do the things we want and need to do.

For Community Amenities and recreation, our team is committed to serving out community. We mentor younger teams, Help at WERK day, go to library events and are in parades. We also want to thank you for allowing us to use the High School to meet and build our robot.

Many Wilsonville companies are involved in FIRST. Mentor Graphics and Xerox contribute the most. They host events, donate money and their employees lend their

time to be mentors

And for economic development, as Toni said earlier, the Wilsonville high school in march will bring in more than 1,000 people who will stay in hotels, eat in restaurants and shop in stores.

## Team 1425 Thanks You!!

**For more information  
contact us at:**

<http://wilsonvilleroobotics.com/>

OR

Kris Troha

Team Lead Mentor

[trohaw@wlwv.k12.or.us](mailto:trohaw@wlwv.k12.or.us)

[503-476-6045](tel:503-476-6045)



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6 / 6

And again we just wanted to say thank you for the support you have given us in the past few years, it really helps. But we do need more money because we are hosting a home event in Wilsonville and because we are building a new pit which is pictured \*here\*. Also, for that event, we need volunteers so if you are interested or have questions about anything else, you can go to this website or contact our Team Lead Mentor, Kris Troha.



## Appendix



Needed to build & Compete



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7 / 6



SUPPORT YOUR  
LOCAL SCHOOLS



## For the Love of Schools City Council Challenge

For the Love of Schools is an annual event to raise much needed monies for our schools! The schools in your city have chosen to participate in this year's run.

It is the first Sunday in June, this year it is June 1st. There is a 5K, 10K and this year we have added a half Marathon! The best part of this event, is that it is totally charitable, and 100% of the entry fees go right back into your schools! That's right, 100% !!!

This year, we have a Challenge for you. \$500 will be donated to the school fund of your choice, in your honor, if your City Council gives cause to more entries than the other participating City Councils. If the Mayor, from the winning city, comes out and participates personally, we will add \$100 to the winning entry!

How do we win \$500 and all the glory that goes along with it, you ask?

Sign up for the event at: [www.fortheloveofschools.com](http://www.fortheloveofschools.com) and go to the "Register Now" button displayed prominently on the webpage.

Pick your school, pick your fund, and in the comment box make sure you type in "City of ....." .

Then continue on and sign up for your event and pick your T-shirt size too.

If you are unable to run, and would like to honor a teacher in your district, you can sponsor an entry for a teacher, which allows them to be invited and participate. This also counts toward the number of entries your City Council is given credit for. You can also run, and sponsor a teacher! That would count as two entries for you!

Participating schools this year are: Woodburn, Canby, Sherwood, West Linn, Wilsonville, Lakeridge, Clackamas, Rex Putnam, Milwaukie and Parkrose!

So there's your competition! I'm sure you are up to the challenge! Let's work together, have some fun and make our schools better for all of us!



SUPPORT YOUR LOCAL SCHOOLS BY JOINING THE

# 3RD ANNUAL

FOR THE LOVE OF SCHOOLS

10K & 5K RUN/WALK

**JUNE 1, 2014**  
FIRST SUNDAY IN JUNE

Visit us online @  
**FORTHELOVEOFSCHOOLS.COM**

**100%** OF YOUR ENTRY DOLLARS  
WILL BENEFIT THE SCHOOLS



CANBY



CLACKAMAS



LAKERIDGE



REX PUTNAM



PARKROSE



MILWAUKIE



*Cougars*  
SHERWOOD



WEST LINN



WILSONVILLE



WOODBURN

# **Tonkin**

FOR THE LOVE of SCHOOLS





## FOR THE LOVE OF SCHOOLS 5K & 10K RACE | JUNE 1, 2014

The current budget cuts, shortfalls and deficits our economy is experiencing is affecting us all. Our children are the future of this state and our economy. Having a solid school system educates the future employees for our companies, cities and state, is a draw for companies wanting to locate here and is a boost to our local economy. Everyone wants the best schools for their kids - it is our job to help provide that. As a founding sponsor, we have undertaken a fundraiser to do just that.

### FOR THE LOVE OF SCHOOLS 5 & 10K RUN/WALK

We have created a "Challenge Run" for elite runners also scheduled for **June 1, 2014**. We have the vision of an annual event eventually reaching the size and popularity of events such as the Shamrock Run, Bridge to Brews, Cinco de Mayo and the Pacific Crest.

The only difference is that this race is not for profit and all for charity, with the ability to bring in much needed dollars to support our schools, teachers and programs that will make our school systems top rate. **EVERY** entry dollar collected goes directly to the education fund of **YOUR** choice.

### ACADEMICS, ARTS AND ATHLETICS: THESE ARE THE FUNDS CURRENTLY RECEIVING DONATIONS FROM THE EVENT:

**ACADEMICS** - An Education Foundation is an organization comprised of concerned citizens who recognize that as education has become more important and more complex, there is a need to develop a means to raise funds for innovative and effective programs that improve student achievement and foster lifelong learning. Each Education Foundation is unique in its operation, its programs, and the resources it provides to the community, but all share a common commitment to improving education at the local level. A donation to the Education Foundations provides resources for more teachers, smaller class sizes, expanded programs and an improved educational system for our kids.

**ARTS** - Participation in music and fine arts programs in school has been shown to improve study habits, test scores and grades, and to enhance creativity, math and critical thinking skills. Simply put, music and arts programs make our kids better students and better thinkers. A child does not need to grow up to be an artist, musician, or actor to benefit from exposure to the creative arts. Arts organizations fund workshops, purchase musical instruments, furnish staging equipment for drama and art, sponsor large performance-based events, and bring professional artists-in-residence to schools to work with teachers and students. Some sponsor scholarships for graduating seniors who appreciate how much Music and the Arts enrich their education today and tomorrow.

**ATHLETICS** - There are many positives of a sound athletic program; the ability to teach the important values of respect, responsibility, fairness, self confidence, sacrifice, accountability and discipline. Most importantly, if school programs have a proper emphasis on such values, athletes learn one of the most essential of sports lessons, how to handle "success with grace" and "failure with dignity".

High athletics and activities promote school and community spirit and involvement, whether playing, or cheering for their school. It boosts school morale when students meet to support their team. No child is denied the opportunity to play sports because of inability to pay. The athletic fund helps students to participate by assisting them with fees, health insurance and equipment for their sport, if necessary. By donating to the athletic fund at your high school of choice, you are helping enable more students be able to afford to participate in the high school sports programs.



# Tonkin

FOR THE LOVE of SCHOOLS



## Honor Our Teachers

At "For the Love of Schools" our goal is to honor every teacher in our schools. We want to honor them by inviting them to experience our fabulous event and see firsthand what we are doing to make our schools a better, more wonderful place to work, learn and grow. By purchasing a "Teacher Entry", you are doing two things: you are telling our teachers they are valued **AND 100%** of your "Teacher Sponsorship" goes directly into the school fund of your choice.

Please join us and honor our teachers and make our schools the best they can be.

\_\_\_\_\_,  
agrees to Sponsor \_\_\_\_\_ Teacher Entries @ \$40/ each, to the "For the Love of Schools" event. 100% of these entry dollars will sponsor a teacher to participate in this event, and go to the school fund of your choice.

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_  
.....

School Choice: \_\_\_\_\_


Fund Choice: \_\_\_\_\_

Mail To:  
Race Director  
26600 SW 95th Avenue  
Wilsonville, Oregon 97070

\_\_\_\_\_



# Tonkin fun run nets \$20,291 for WL-WV schools

Created on Thursday, 18 July 2013 01:00 | Written by [Kate Hoots](#) | 

## **WLHS athletic fund receives \$1,040**

The results are in for the second annual Tonkin For the Love of Schools fun run.

by: VERN UYETAKE - Michelle Tonkin organized the second annual For the Love of Schools fun run, held on June 2.

Held June 2 in Wilsonville, the event brought a total of \$20,291 to West Linn-Wilsonville schools. Compared to last year's proceeds of about \$5,000, that number had everyone smiling when Michelle Tonkin met at the district office July 11 with Superintendent Bill Rhoades and representatives from school groups including Music and Arts Partners, the Education Foundation and Wilsonville High School athletics.

"No business could ask for better growth than this," said Scott Mitchell, director of e-commerce for the Tonkin group's Audi Wilsonville.

The event's sign-up process allowed people to select from a group of education supporters as they registered, and the Tonkin group donated 100 percent of the registration fees to the designated organizations.

The Education Foundation received \$6,516 in registration fees, followed by Wilsonville High School's athletic fund, which received a total of \$5,441. That amount will be divided among different athletic groups, with girls lacrosse receiving \$2,225; the general athletic fund, \$2,026; boys lacrosse, \$500; golf, \$350; football, \$185; and cross country, \$155.

Three Rivers Charter School received a total of \$4,516, while Music and Art Partners (MAP) received \$2,776. West Linn High School's athletic fund received \$1,040, split between the general athletic fund, which received \$690, and the cheer squad, which received \$350.



by: VERN UYETAKE - School supporters met with Michelle Tonkin on July 11 to discuss the fun run results. From left, back row, are Dennis Burke, Wilsonville High School assistant principal; Patti Millage, Music and Arts Partner treasurer; Jay Puppò, WL-WV Education Foundation president. Seated are Michelle Tonkin and Superintendent Bill Rhoades.

"It's a huge way of saying to kids, 'Whatever you want to do, you can do it. We will support you,'" Mitchell said.

Based on this year's success, Tonkin announced her decision to expand the run next year.

She is in discussion with several area school districts and has confirmations from two. The 2014 For the Love of School fun run will include Parkrose and Canby.

It doesn't dilute the event as a fundraiser to add more school districts, Tonkin said, because each district brings its own supporters. And adding others to the race has at least one advantage, Tonkin said. "What a way to showcase our city."





## How does it work? How does my selected school get the money?

### 1. Runner entries

- a. 100% of runner entry fees are donated to the fund designated by the entrant at sign up. Any entries that do not have a designated school will go into the general fund and distributed equally to a participating schools.

### 2. Teacher sponsorships

- a. Teacher sponsorships go to the school that was designated by the donor at 100%

### 3. Business Sponsorships

- a. Business donations and sponsorships either go 100% toward the cost of the race or 50% to the school and 50% to the cost of the race depending on the donor's specification.

## How does my business get exposure from supporting this event?

The sponsorship sheet offers many levels of participation from signage and visibility to having an onsite area to present to the participants what your business has to offer- your choice.

Please see the sponsorship sheet for details.

## How does it benefit my community?

It is a rare opportunity when **100%** of funds raised go directly to a charity (in this case, your school) of your choice. This fundraiser will have a significantly higher impact than typical fundraising opportunities, ( cookie dough, gift wrap, pizza, etc.)

For example, this event has raised over \$20,000 for the West Linn -Wilsonville schools in only its second year.

## Event Trends

**1st year** - 150 participants raised \$5000. One School District.

**2nd year** - 600+ participants raised over \$20,000. One School District.

**3rd year projection**-7 School Districts. This will create a much higher participation with a significant boost to the general fund opportunities which are equally distributed among all participating schools.

**4th year projection**- addition of 5 to 7 school districts making a much bigger impact to Portland metro school funds.

## Ultimate goal-

We will strive to get all School Districts in the Portland Metropolitan and surrounding areas to take advantage of this opportunity. The creation of an event that promotes fun and community involvement for the betterment of our schools!



# **CITY COUNCIL ROLLING SCHEDULE**

## **Board and Commission Meetings 2014-15**

### **FEBRUARY**

<b>DATE</b>	<b>DAY</b>	<b>TIME</b>	<b>MEETING</b>	<b>LOCATION</b>
2/20	Thursday	7 p.m.	City Council Meeting	Council Chambers
2/24	Monday	6:30 p.m.	DRB Panel B	Council Chambers
2/26	Wednesday	6:30 p.m.	Library Board	Library

### **MARCH**

<b>DATE</b>	<b>DAY</b>	<b>TIME</b>	<b>MEETING</b>	<b>LOCATION</b>
3/3	Monday	7 p.m.	City Council Meeting	Council Chambers
3/10	Monday	6:30 p.m.	DRB Panel A	Council Chambers
3/12	Wednesday	6 p.m.	Planning Commission	Council Chambers
3/13	Thursday	6:30 p.m.	Parks & Recreation Advisory Board	Council Chambers
3/17	Monday	7 p.m.	City Council Meeting	Council Chambers
3/24	Monday	6:30 p.m.	DRB Panel B	Council Chambers
3/26	Wednesday	6:30 p.m.	Library Board	Library

### **COMMUNITY EVENTS**

#### CANYON CREEK ROAD CITIZEN MEETING

Date: February 24, 2014 5:30 PM – 7 p.m.  
City Hall - 2<sup>nd</sup> floor Willamette River Room

#### DADDY DAUGHTER DANCE "A Night in Hollywood"

Date: February 28, 2014 7:00 PM – 9:00 PM  
\$14 per person  
Community Center  
Register early since space is limited to 125.

#### VOLUNTEER PLANTING & TREE CARE EVENT

Date: 3/8/14 9 AM – 1 PM  
Wilsonville Community Center Garden  
Contact Friends of Trees at 503-595-0213 to RSVP or for more information



#### PARK RESERVATION SEASON OPENS

March 10, 2014 8 AM  
Reservations for Wilsonville residents and businesses will be accepted starting March 10th for the 2014 park season. The rental season runs from April 15th to October 15th. Reservations for non-residents opens on March 17th. For more information on availability and fees please visit the park shelter page or contact Judy Lawhead at 503-570-1530.

*more*



#### COMMUNITY GARDEN REGISTRATION OPENS

March 20, 2014 8 AM

Registration for the Community Garden opens at 8:00am. Gardeners must come to the Community Center to register in person and pick their plot. For more information please contact Brian Stevenson at 503-570-1523

#### TOURISM STRATEGY DEVELOPMENT TASK FORCE MEETING

March 20, 2014 1:30 PM

Wilsonville Tourism Development Strategy Task Force Meeting #5 is focused on reviewing public comments and accepting of and recommending to City Council a final Tourism Development Strategy. The Tourism Development Strategy is scheduled to be presented to the City Council in April 2014 for adoption as a component of the City's larger Economic Development Strategy. All meetings of the task force are open to public. For more information, contact Mark Ottenad, Public/Government Affairs Director, at 503-570-1505; [ottenad@ci.wilsonville.or.us](mailto:ottenad@ci.wilsonville.or.us).


**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date:</b>  March 3, 2014		<b>Subject: Ordinance No. 736</b> Vacation of Portions of SW 110 <sup>th</sup> Avenue. Polygon NW Company, Petitioner.	
		<b>Staff Member:</b> Daniel Pauly AICP, Associate Planner. <b>Department:</b> Planning Division	
<b>Action Required</b>		<b>Development Review Board Recommendation</b>	
<input type="checkbox"/> Motion <input checked="" type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: March 3. <input checked="" type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: March 17 <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable	
		<b>Comment:</b> Following their review at the February 10th meeting, the Development Review Board, Panel A recommends approval of the street vacation.	
<b>Staff Recommendation:</b> Staff recommends City Council adopt Ordinance No. 736.			
<b>Recommended Language for Motion:</b> I move to approve Ordinance No. 736 on the first reading.			
<b>PROJECT / ISSUE RELATES TO:</b> Comprehensive Plan, Zone Code, Transportation System Plan, Villebois Village Master Plan.			
<input type="checkbox"/> Council Goals/Priorities	<input checked="" type="checkbox"/> Adopted Master Plan(s) Villebois Village Master Plan, Transportation Systems Plan	<input type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:** Vacation of portions of SW 110<sup>th</sup> Avenue in Villebois to enable the previously approved and planned street network and residential and park development in this portion of Villebois. Replacing SW 110<sup>th</sup> Avenue as is shown in both the Transportation Systems Plan and the Villebois Village Master Plan.

**EXECUTIVE SUMMARY:** SW 110<sup>th</sup> Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110<sup>th</sup> and the north-south connectivity it provided. During the



earlier phases of Villebois development the most southerly portion of the original SW 110<sup>th</sup> Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110<sup>th</sup> Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East.

The proposed vacation allows the conversion of much of the remainder of SW 110<sup>th</sup> Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110<sup>th</sup> Avenue will remain to provide access to a property on the west side of SW 110<sup>th</sup> just south of SW Tooze Road not yet proposed for development. The north-south connectivity of SW 110<sup>th</sup> Avenue will be replaced by a new segment of SW Villebois Drive North with bike lanes and sidewalks which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman bridge.

**EXPECTED RESULTS:** Adoption of Ordinance No. 736 vacating portions of 110<sup>th</sup> Street in furtherance of previous plans and approvals noted above.

**TIMELINE:** Construction of SW Villebois Drive North and demolition of the vacated portions of SW 110<sup>th</sup> Avenue are anticipated this summer.

**CURRENT YEAR BUDGET IMPACTS:** The vacation of the right-of-way does not have a budget impact.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: JEO, Date: 2/21/14

No financial impact.

**LEGAL REVIEW / COMMENT:**

Reviewed by: MEK, Date: February 19, 2013

There are several requirements that need to be met for a street vacation petition to be approved. Staff has set those forth and how they are met in Attachment A to the Ordinance. The referenced DRB process meets city code requirements for a street vacation as well. The form of the ordinance is approved.

**COMMUNITY INVOLVEMENT PROCESS:** The required public hearing notices have been sent and the required notice has been posted along the right-of-way requested to be vacated.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** Ordinance No. 736 will provide:

- Continued build-out of the Villebois Village Master Plan
- Support of the implementation of two high priority projects listed in the 2013 Transportation



Systems Plan: RE-09 Villebois Drive Extension from Costa Circle to Coffee Lake Drive, and RE-10 Villebois Drive Extension Coffee Lake Drive to Boeckman Road.

- Improved bike and pedestrian connectivity and safety by replacing two-lane SW 110<sup>th</sup> Avenue without sidewalks or bike lanes with a complete street including bike lanes and sidewalks.
- Road closures and traffic detours during construction, which will be coordinated with the City to minimize duration.
- Development of a number of private parks.

**ALTERNATIVES:** Approve the vacation with the Conditions of Approval in the staff report or attach additional conditions the Council deems necessary to satisfy City code and policy.

**CITY MANAGER COMMENT:**

**ATTACHMENTS:**

Exhibit A – Ordinance No. 736

Attachment A - Street Vacation Staff Report Findings

Attachment B - Street Vacation Petitions

Attachment C - Legal Description of Tracts being vacated

Exhibit B - DRB Resolution No. 269

Exhibit C - DRB Adopted Staff Report and Exhibits

## ORDINANCE NO. 736

### **AN ORDINANCE OF THE CITY OF WILSONVILLE DECLARING AND AUTHORIZING THE VACATION OF THREE (3) PORTIONS OF SW 110<sup>th</sup> AVENUE PUBLIC STREET RIGHT-OF-WAY BETWEEN SW MONT BLANC STREET AND SW TOOZE ROAD/SW BOECKMAN ROAD IN VILLEBOIS LEGALLY DESCRIBED IN ATTACHMENT C**

WHEREAS, Polygon Northwest Company has filed Street Vacation Petitions with the City of Wilsonville requesting vacation proceedings be initiated for three portions of 110<sup>th</sup> Street, as authorized by ORS 271.080-271.170; Polygon Northwest Company or entities, including limited liability companies and homeowners associations in which it has interest or which it has control, being the owners of or having an option to purchase the immediately adjacent property to the north, west, and east of the street right-of-way petitioned for vacation; and

WHEREAS, staff has reviewed the submitted Street Vacation Petitions against the applicable city code and state statutory review requirements and has found the petitions to be in compliance with all the requirements as set forth in **Attachment A**, Street Vacation Staff Report Findings, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, in accordance with the Villebois Village Master Plan and the City's Transportation System Plan, the right-of-way requested to be vacated is planned to no longer function as a public street; and

WHEREAS, the Development Review Board and City Council have approved developments of adjacent residential subdivisions with private parks over the tracts to be vacated, conditioned, in part, on vacation of the street right-of-way; and

WHEREAS, in compliance with the aforementioned development conditions, Polygon Northwest Company has provided the City with the required Street Vacation Petitions with the consent from the affected adjacent property owners of two-thirds of the area, legal descriptions and associated maps. Exhibit C to the petitions references the respective development application, which conditions of approval are a part thereof, and are summarized in **Attachment A**. The applications with conditions of approval are on file with the City, and as recited above provide the purpose for which the ground is proposed to be used and the reason for the vacation and being on file were not required to be attached to the petitions to avoid unnecessary



duplication. The Street Vacation Petitions are marked as **Attachment B**, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the three portions of 110<sup>th</sup> Street to be vacated are legally described as three tracts: Tract 1, containing approximately 6,024 square feet; Tract 2, containing approximately 12,647 square feet; and Tract 3, containing approximately 12,139 square feet, which descriptions are more fully described in **Attachment C**, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, **Attachment A** provides as conditions for vacation: 1) requiring temporary public access easements over the vacated tracts to allow continued public use of SW 110<sup>th</sup> Avenue prior to its demolition and reconfiguration of the street network; 2) requiring appropriate easements be provided for any and all public and private utilities located within and below the vacated tracts; and 3) requiring the future demolition of SW 110<sup>th</sup> Avenue and construction of the reconfigured street network to be coordinated with the City to minimize impacts on the travelling public; and

WHEREAS, the public notice has been duly published and posted on the property as required in ORS 271.110 (Notice of Public Hearing) and the requisite affidavits are on file with the office of the City Recorder; and

WHEREAS, staff has also presented its City Council Meeting Staff Report, which has been made part of the record of this hearing and sets forth that the Development Review Board conducted a public hearing on February 10, 2014, affording the public an opportunity to comment on the proposed tracts for street vacation, and then passed Resolution No. 269 recommending approval of the street vacation of the three tracts to the City Council, which Resolution has been attached to the City Council Meeting Staff Report as Exhibit B, together with the accompanying staff report to the DRB as Exhibit C to the City Council Meeting Staff Report; and

WHEREAS, on March 3, 2014, the City Council duly conducted a public hearing on the above referenced petitions for street vacation, and based on the record, the attachments and exhibits, and testimony provided, and being fully advised, the Council finds that the proposed vacation is consistent with all applicable land use regulations, the City Code requirements for street vacations, as well as the statutory requirements as set forth in **Attachments A, B, and C**; and



WHEREAS, as required by ORS 271.120, the Council further finds that the public interest is not prejudiced by vacation of the public right-of-way due to the fact new transportation facilities are being provided consistent with the City's Transportation System Plan and Villebois Village Master Plan.

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. Findings, Determinations and Conclusions. The City Council adopts, as its findings, determinations, and conclusions, the above Recitals and incorporates them by reference as if fully set forth herein.

Section 2. Order. The portions of the public right-of-way known as 110<sup>th</sup> Avenue, as more fully described in **Attachment C**, situated in the northeast quarter of Section 15, Township 3 South, Range 1 West of the Willamette Meridian, City of Wilsonville, Clackamas County, Oregon, are hereby declared vacated, subject to conditions of approval and title passing as set forth in the Street Vacation Staff Report Findings, **Attachment A**.

Section 3. Certification. The City Recorder is directed to certify this Ordinance and make the applicable filings in accordance with ORS 271.150.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 3rd day of March, 2014, at the hour of 7:00 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon, and scheduled for second reading on the 17th day of March, 2014, commencing at the hour of 7:00 p.m. at the Wilsonville City Hall.

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Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2014, by the following votes:                      Yes: \_\_\_\_                      No: \_\_\_\_

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Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

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TIM KNAPP, MAYOR

**SUMMARY OF VOTES:**

Mayor Knapp

Council President Starr

Councilor Goddard

Councilor Fitzgerald

Councilor Stevens

**Attachments:**

Attachment A - Street Vacation Staff Report Findings

Attachment B - Street Vacation Petitions

Attachment C - Legal Description of Tracts Being Vacated



Ordinance No. 736 Attachment A  
**STAFF REPORT**  
**WILSONVILLE PLANNING DIVISION**

*SW 110th Avenue Street Vacation, PDP 3 and 4 East*  
*"Tonquin Meadows"*

**CITY COUNCIL**

**QUASI-JUDICIAL PUBLIC HEARING FOR STREET VACATION**

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**HEARING DATE** March 3, 2014

**APPLICATION NO.:** DB14-0001 Vacation of a Portion of SW 110th Avenue Right-of-Way

**REQUEST/SUMMARY:** The City Council is being asked to review the vacation of portions of SW 110<sup>th</sup> Avenue to allow development of private park areas consistent with the previously approved Villebois Phases 3 and 4 East. The connectivity provided by SW 110<sup>th</sup> will be provided by a planned new segment of SW Villebois Drive North.

**LOCATION:** Portions of SW 110<sup>th</sup> Avenue right-of-way between SW Mont Blanc Street and SW Tooze Road/SW Boeckman Road, Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

**ADJACENT  
PROPERTY OWNERS:** Donald E. Bischoff and Sharon L. Lund (Tax Lot 180)  
Polygon at Villebois III LLC (Tax Lots 2916 and 2919)  
Polygon at Villebois V LLC (Tax Lot 301)

**APPLICANT/  
PETITIONER:** Fred Gast, Polygon NW Company

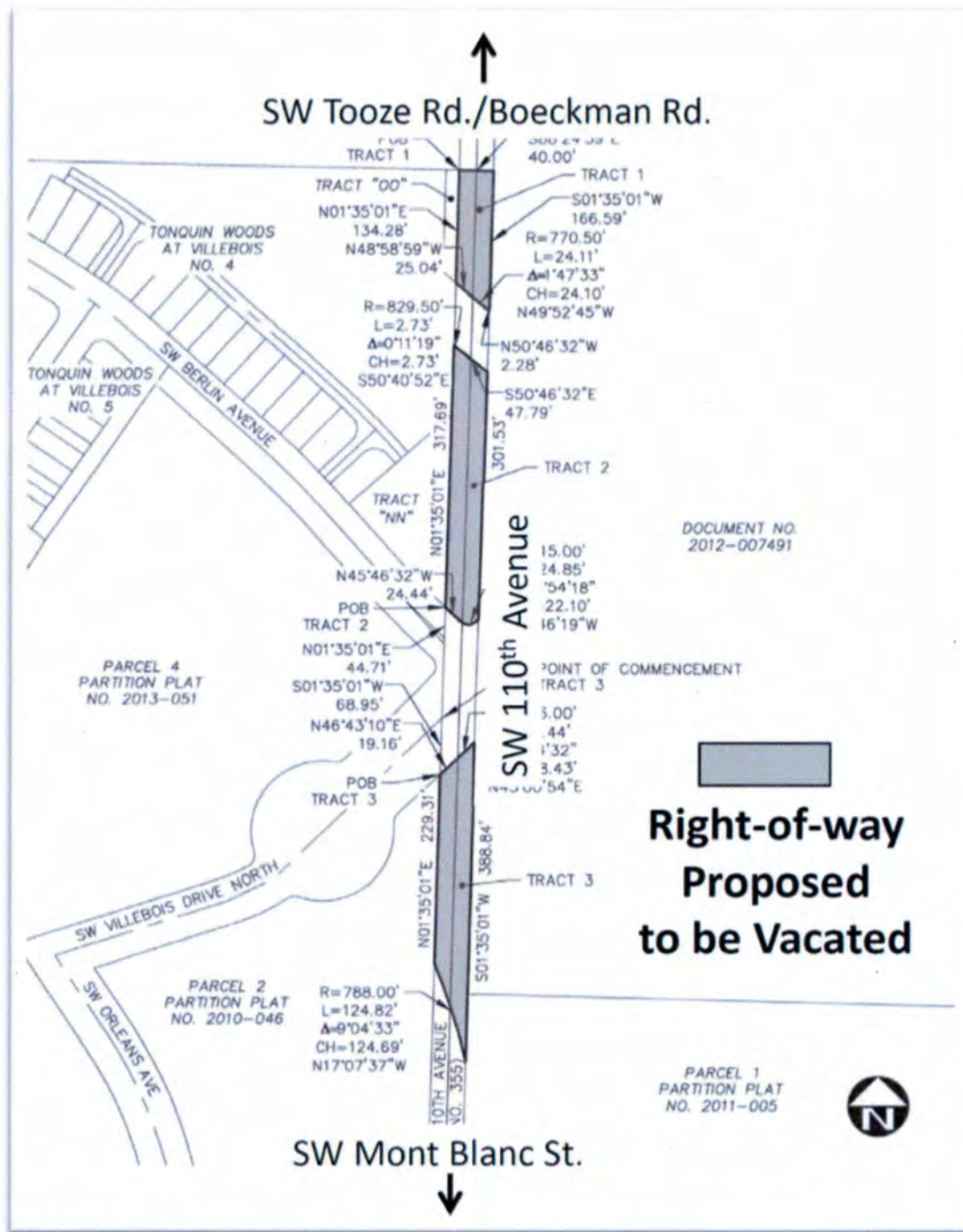
**APPLICANT'S REP.:** Stacy Connery, AICP, Pacific Community Design, Inc.

**COMPREHENSIVE PLAN MAP DESIGNATION:** Residential-Village

**ZONE MAP CLASSIFICATIONS:** V (Village)

**STAFF REVIEWERS:** Daniel Pauly AICP, Associate Planner  
Steve Adams PE, Development Engineering Manager

**DRB RECOMMENDATION:** **Approve** the request and vacate the requested portions of SW 110<sup>th</sup> Avenue as shown on the map below.





## APPLICABLE REVIEW CRITERIA

<b><u>DEVELOPMENT CODE</u></b>	
<b>Section 4.008</b>	<b>Application Procedures-In General</b>
<b>Section 4.009</b>	<b>Who May Initiate Application</b>
<b>Section 4.010</b>	<b>How to Apply</b>
<b>Section 4.011</b>	<b>How Applications are Processed</b>
<b>Section 4.014</b>	<b>Burden of Proof</b>
<b>Subsection 4.031 (.01) L.</b>	<b>Authority of the Development Review Board: Street Vacations</b>
<b>Subsection 4.032 (.01) D.</b>	<b>Authority of the Planning Commission: Street Vacations</b>
<b>Subsection 4.033 (.01) H.</b>	<b>Authority of the City Council: Street Vacations</b>
<b>Subsection 4.034 (.07)</b>	<b>Street Vacation Review Standards and Procedures</b>
<b><u>OTHER PLANNING DOCUMENTS</u></b>	
<b>Villebois Village Master Plan</b>	
<b>Transportation Systems Plan</b>	
<b>SAP East Approval Documents</b>	
<b>PDP 3 East Approval Documents</b>	
<b>PDP 4 East Approval Documents</b>	
<b><u>OREGON REVISED STATUTES</u></b>	
<b>ORS 271.080</b>	<b>Vacation in incorporated cities; petition; consent of property owners.</b>
<b>ORS 271.120</b>	<b>Vacation hearing; determination.</b>
<b>ORS 271.140</b>	<b>Title to vacated areas.</b>
<b>ORS 271.150</b>	<b>Vacation records to be filed; costs.</b>
<b>ORS 271.190</b>	<b>Vacation consent of owners of adjoining properties; other required approval.</b>
<b>ORS 271.200</b>	<b>Vacation Petition; notice</b>

## BACKGROUND/SUMMARY:

SW 110<sup>th</sup> Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110<sup>th</sup> and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110<sup>th</sup> Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110<sup>th</sup> Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East. The proposed vacation allows the conversion of much of the remainder of SW 110<sup>th</sup> Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110<sup>th</sup> Avenue will remain to provide access to a property on the west side of SW 110<sup>th</sup> just south of SW Tooze Road not yet proposed for development. The north-south

City Council, Staff Report March 3, 2014  
Vacation of Portions of SW 110<sup>th</sup> Avenue

Ordinance No. 736 Attachment A



connectivity of SW 110<sup>th</sup> Avenue will be replaced by a new segment of SW Villebois Drive North which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman bridge. The demolition of SW 110<sup>th</sup> and construction of the new SW Villebois Drive North segment is currently planned later this year together with Polygon Homes construction of a new subdivision previously approved.



## CONCLUSION AND CONDITIONS OF APPROVAL:

Staff and the DRB have reviewed the applicant's analysis of compliance with the applicable criteria. This Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, the Development Review Board recommends approval of the proposed application (DB14-0001) with the following conditions:

### **Conditions:**

- |  |
|--|
| <p><b>PF 1.</b> Concurrently with the 110th Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110th Avenue prior to its demolition and reconfiguration of the street network.</p>   |
| <p><b>PF 2.</b> For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum 15-foot wide easements centered on the utility. For private easements they shall be of</p> |



sufficient width as needed by the private utility and as approved by the City.
<b>PF 3.</b> The future demolition of 110th Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.

## **FINDINGS OF FACT:**

### 1. Prior land use actions include:

#### Legislative:

02PC06 - Villebois Village Concept Plan  
 02PC07A - Villebois Comprehensive Plan Text  
 02PC07C - Villebois Comprehensive Plan Map  
 02PC07B - Villebois Village Master Plan  
 02PC08 - Village Zone Text  
 04PC02 – Adopted Villebois Village Master Plan  
 LP-2005-02-00006 – Revised Villebois Village Master Plan  
 LP-2005-12-00012 – Revised Villebois Village Master Plan (Parks and Recreation)  
 LP13-0005 – Revised Villebois Village Master Plan

#### Quasi Judicial:

04 DB 22 et seq – SAP-East  
 DB12-0042 et seq – PDP-3E Tonquin Meadows  
 DB12-0050 et seq – PDP-4E Tonquin Meadows No. 2  
 DB13-0013 et seq – PDP-4C Polygon Northwest at Villebois No. 2  
 AR13-0046 PDP 3 and 4 East Phasing Amendment

### 2. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

## **CONCLUSIONARY FINDINGS:**

### **Planning and Land Development Ordinance**

#### ***Subsections 4.031 (.01) L., 4.032 (.01) D., Subsection 4.033 (.01) H. Authority to Review Street Vacations***

### 1. **Review Criteria:** These subsections define the roles of the Development Review Board, the Planning Commission, and City Council for street vacations. The Development Review Board is authorized to make recommendations to City Council for street vacations where a specific development application has been filed for the subject property. The Planning Commission is authorized to make recommendations to City Council for street vacations where no specific development application has been filed for the subject property. City Council takes final action on street vacation applications.

**Finding:** These criteria are satisfied.

**Details of Finding:** Specific development applications have been filed and approved by the City for the land being vacated subject to approval of the street vacation. The land is



approved to be development as private park space. See case files DB12-0042 (Preliminary Development Plan, Villebois Phase 3 East), DB12-0048 (Final Development Plan for Parks and Open Space, Villebois Phase 3 East), DB12-0050 (Preliminary Development Plan, Villebois Phase 4 East), and DB12-0054 (Final Development Plan for Parks and Open Space, Villebois Phase 4 East). Due to the previous submission of specific development application for the subject land, the Development Review Board is reviewing the street vacation to make a recommendation to City Council. The City Council will then take the final action on the request.

#### ***Subsection 4.034 (.07) Standards for Street Vacation***

2. **Review Criteria:** “Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.  
**Finding:** These criteria are satisfied.  
**Details of Finding:** As shown in Findings 9 -16 below, the request is being reviewed in accordance with ORS 271.

#### ***Previous Land Use Approvals***

#### ***DB12-0042 SAP-East PDP 3E, Preliminary Development Plan, Condition of Approval PFA 34.***

3. **Review Criteria:** “The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110th Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110th Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.”

**Finding:** These criteria are satisfied.

**Details of Finding:** PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110th Avenue will be demolished with roadway construction. Portions of 110th Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110th Avenue. The Final Plat for the 1st phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.



Approval of this application for ROW vacation of portions of SW 110th Avenue will allow the Applicant to comply with Condition PFA 34.

**Transportation Systems Plan**

***Table 5-4. Higher Priority Projects (Southwest Quadrant) Roadway Extensions***

4. **Review Criteria:**

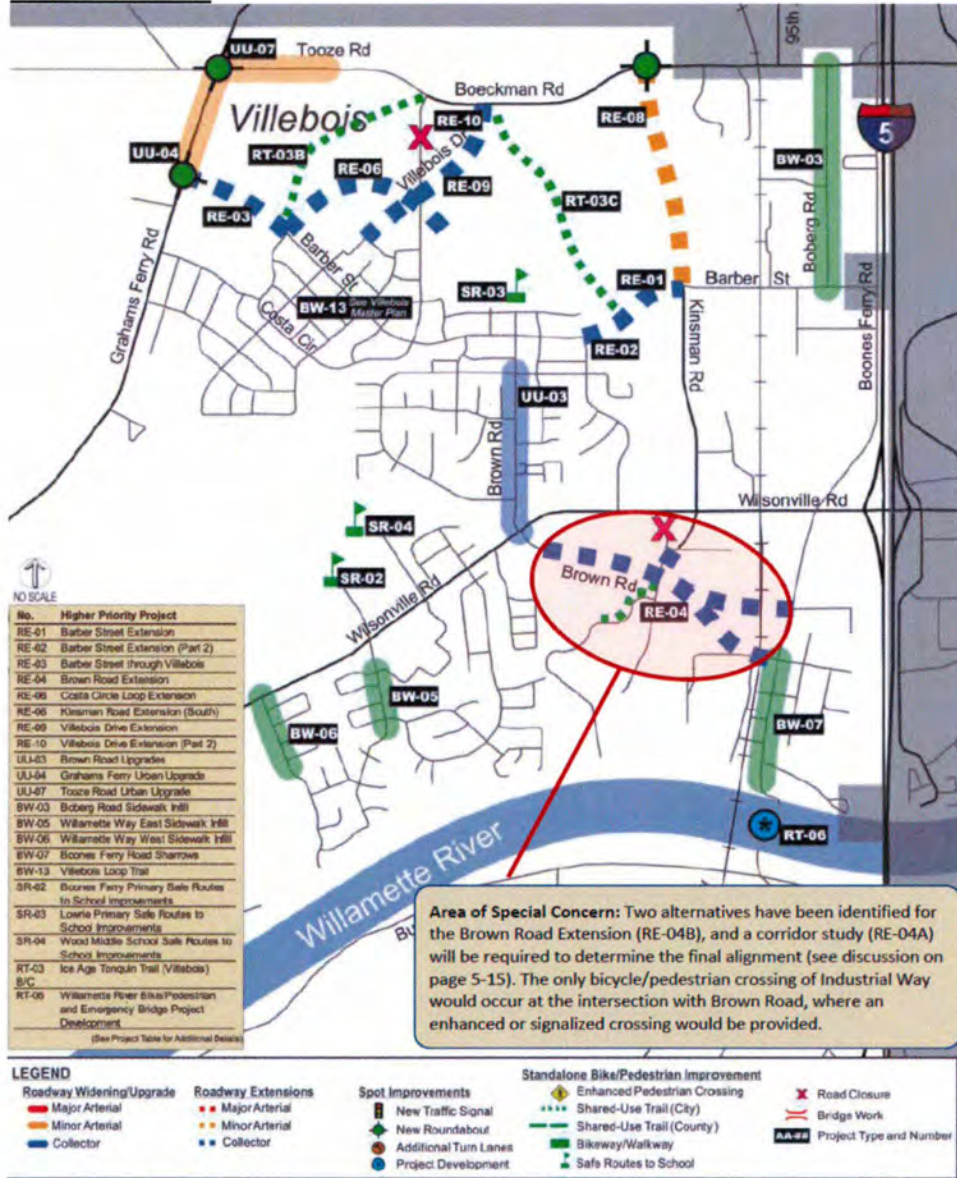
RE-09	Villebois Drive Extension	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Costa Circle to Coffee Lake Drive	\$390,000
RE-10	Villebois Drive Extension (Part 2)	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Coffee Lake Drive to Boeckman Road	\$250,000

**Finding:** These criteria are satisfied.

**Details of Finding:** The listed extensions of Villebois Drive in the Transportation System Plan are planned to be constructed as part of Construction Phase 1 of PDP 3 and 4 East as shown in the phasing plan approved in Case File AR13-0046, and will replace the north-south connectivity between Villebois and SW Boeckman Road/SW Tooze Road.

Figure 5-5. Higher Priority Projects (Southwest Quadrant)

5. **Review Criteria:**



**Finding:** This criterion is satisfied.

**Details of Finding:** The closure of SW 110<sup>th</sup> is shown by the red "X" in Figure 5-5 in association with projects RE-09 and RE-10, extension of SW Villebois Drive.



## Villebois Village Master Plan

**Figure 5B Parks and Open Space Categories**

6. Review Criteria:

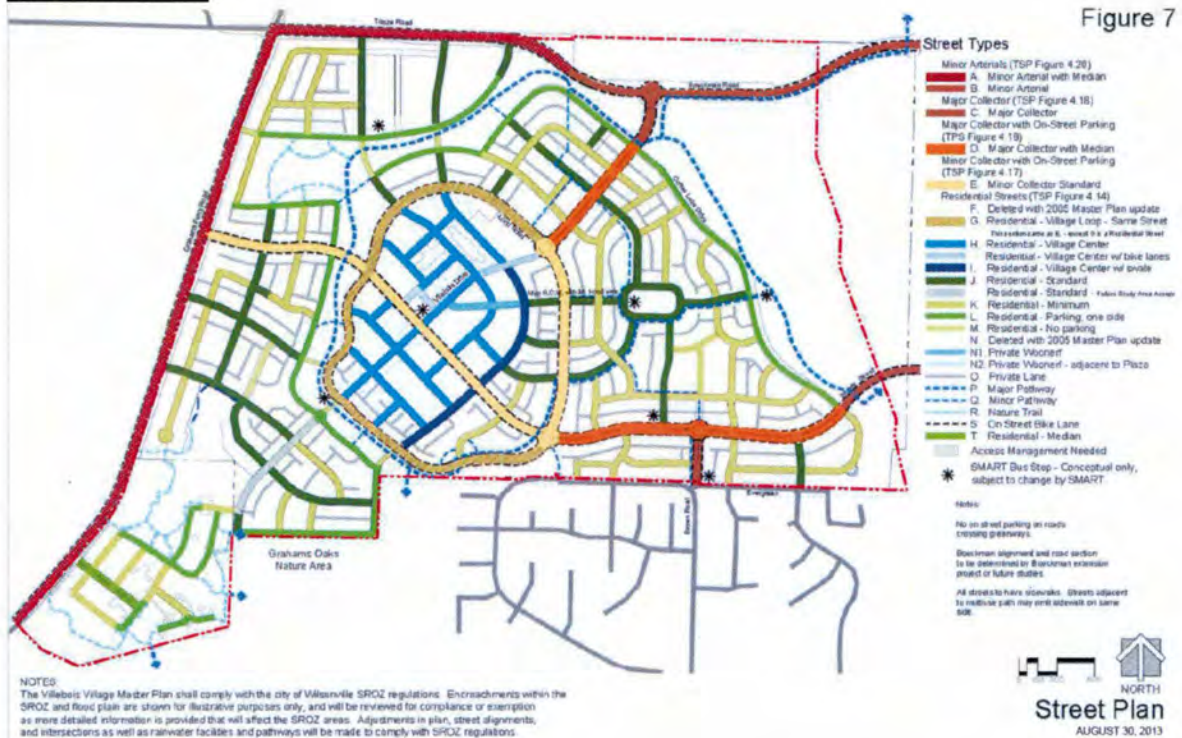


**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show the intention for the portions of SW 110<sup>th</sup> being vacated to become private parks.

**Figure 7 Street Plan**

7. **Review Criteria:**



**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show how SW 110<sup>th</sup> is not planned as part of the circulation and street system in the Villebois Village Master Plan.



**Figure 8. Proposed Arterial and Collector System**

8. **Review Criteria:**

Figure 8



Proposed Arterial/Collectors Street System  
FEBRUARY 23, 2005

**Finding:** This criterion is satisfied.

**Details of Finding:** Figure 8 of the Villebois Village Master Plan shows SW 110<sup>th</sup> Avenue as an “Existing street replaced by the Villebois Circulation Plan.”

**Oregon Revised Statutes**

**ORS 271.080 (1) Petition for Street Vacation in Incorporated Cities**

9. **Review Criterion:** “Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.”

**Finding:** This criterion is satisfied.

**Details of Finding:** Polygon Homes has filed the described petition. Previous land use actions by the City approve Polygon, contingent on the vacation, to construct private parks on the vacated right-of-way. The reason for the vacation is clear in previous land use approvals and the record of this request, including the connectivity provided by SW 110<sup>th</sup> being provided by planned new roads.

**ORS 271.080 (2) Consent of Adjoining Property Owners**

10. **Review Criterion:** “There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds



in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing."

**Finding:** This criterion is satisfied.

**Details of Finding:** The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

#### ***ORS 271.090 Submission of Street Vacation Petition to City***

11. **Review Criteria:** "The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The petition has been submitted to the City, and Polygon has been informed of the hearing dates before the Development Review Board and City Council.

#### ***ORS 271.100 City Action of Street Vacation Petition***

12. **Review Criteria:** "The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The vacation of these portions of SW 110<sup>th</sup> have long been showed in City adopted master plans and a development application was approved by the City to develop the vacated right-of-way contingent on approval of the vacation. The City is setting and holding public hearings to consider the petition.

#### ***ORS 271.110 Notice of Hearing***

13. **Review Criteria:** This section prescribes the notices required for street vacation hearings including newspaper publication and posting of notices along the right-of-way to be vacated.

**Finding:** These criteria are satisfied.

**Details of Finding:** The noticing requirements required by ORS 271.110 have or will be met prior to the hearing.



#### ***ORS 271.120 Hearing; determination***

14. **Review Criteria:** “At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.”

**Finding:** These criteria are satisfied.

**Details of Finding:** The consent of the owners of the requisite area have been obtained as shown with the attached petitions, notice has been given as prescribed. Public policy, as shown in the Villebois Village Master Plan and Transportation Systems Plan, has long been to vacate the proposed area upon replacement with streets planned as part of the Villebois development. After receiving a recommendation from the Development Review Board the City Council would vacate the street by ordinance.

#### ***ORS 271.140 Title to Vacated Areas***

15. **Review Criteria:** “The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city.”

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

#### ***ORS 271.150 Vacation Records to be Filed***

16. **Review Criteria:** “The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city.”

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the ordinance will be recorded as required by this section, the cost of which will be borne by the petitioner.

## Street Vacation Petition

---

This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

### REQUIRED SIGNATURES:

We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110<sup>th</sup> Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

- 1) Polygon at Villebois III, LLC  
Property Owner's Name

No site address; Reference Parcel 31W15 02916  
Property Street Address and Legal Description

No site address; Reference Parcel 31W15 02919  
Property Street Address and Legal Description

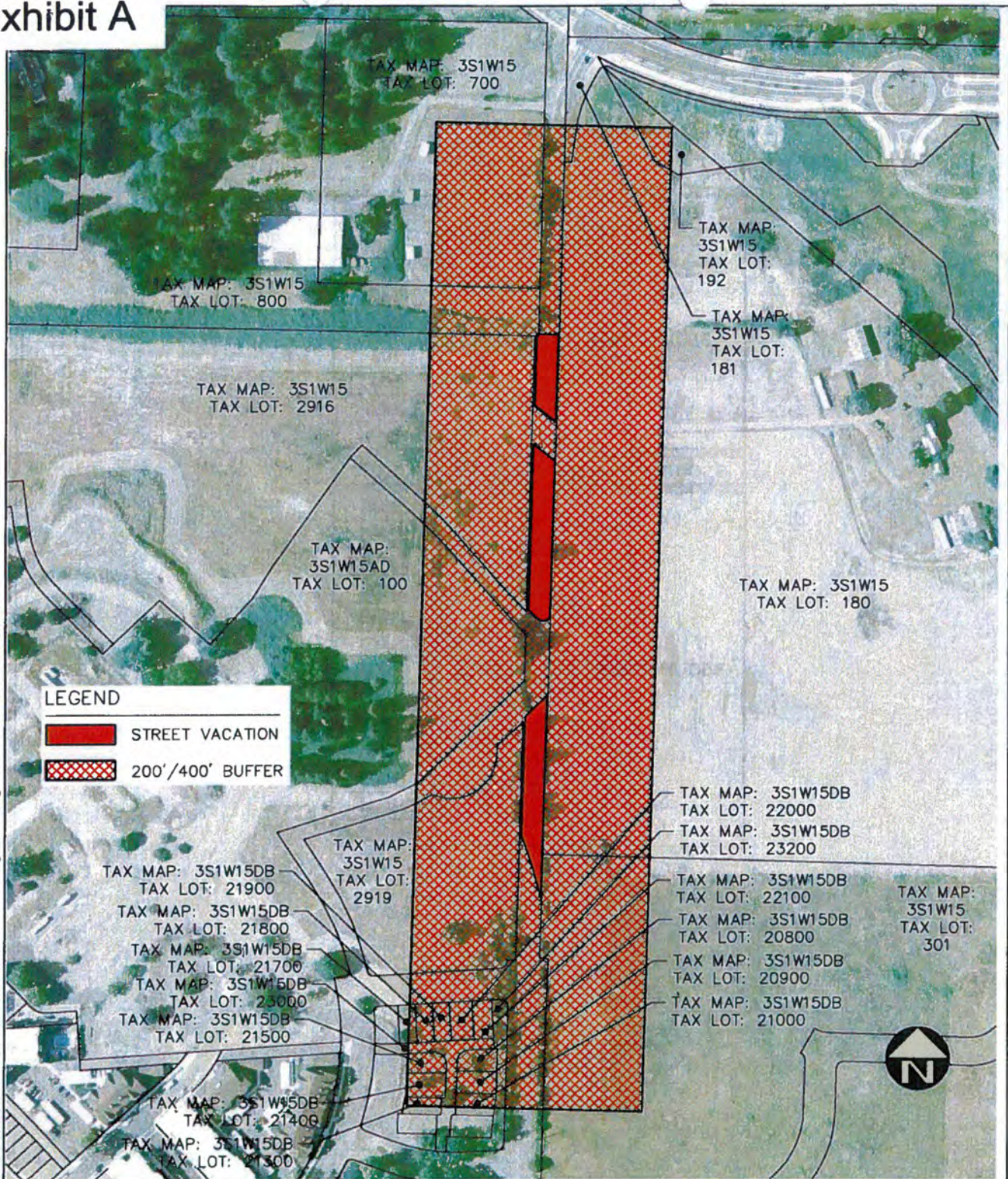
  
Signature

01/09/14  
Date



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legal\395025.Street Vacation.Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cl



DRAWN BY: CLL DATE: 12/12/13  
 REVIEWED BY: TCJ DATE: 12/12/13  
 PROJECT NO.: 395-025  
 SCALE: 1"=250'  
 PAGE 1 OF 2



12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485



N:\proj\395-025\09 Drawings\06 Survey\Legal\395025 Street Vacation Lots.2013-12-12.dwg - SHEET: Legal Desc (2) Dec: 18, 13 - 10:52 AM cll

TAX MAP	TAX LOT #
3 SOUTH 1 WEST SECTION 15	180
	181
	192
	301
	700
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3 SOUTH 1 WEST SECTION 15 DB	20800
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PAGE 2 OF 2



12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485



# Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRES	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
31W15 00301	Polygon At Villebois LLC	Polygon At Villebois LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 00181	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15 00192	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15AD00100	Rcs-Villebois Dev LLC	Rcs-Villebois Dev LLC		371 Centennial Pkwy #200	Louisville	CO	80027
31W15 02916	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 02919	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15DB20800	Lorenzo & Laura Young	Lorenzo & Laura	Young	28949 SW Costa Cir E	Wilsonville	OR	97070
31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21000	Julie Helmke	Julie	Helmke	28969 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21300	Sheryl Dischner	Sheryl	Dischner	28962 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21400	James Woodin	James	Woodin	28954 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21500	Austin Joyner	Austin	Joyner	28926 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21700	Juan & Michele Vasquez	Juan & Michele	Vasquez	11124 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Milian Stewart	Milian	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22000	Judi Campbell	Judi	Campbell	11090 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22100	Matthew & Karlee Wyckoff	Matthew & Karlee	Wyckoff	11082 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB23000	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209
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## Street Vacation Petition

---

This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

### REQUIRED SIGNATURES:

We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110<sup>th</sup> Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

2) Polygon at Villebois V, LLC  
\_\_\_\_\_  
Property Owner's Name

29092 SW 110th Ave, Wilsonville, Oregon 97070; Reference Parcel 31W15 00301  
\_\_\_\_\_  
Property Street Address and Legal Description

Signature

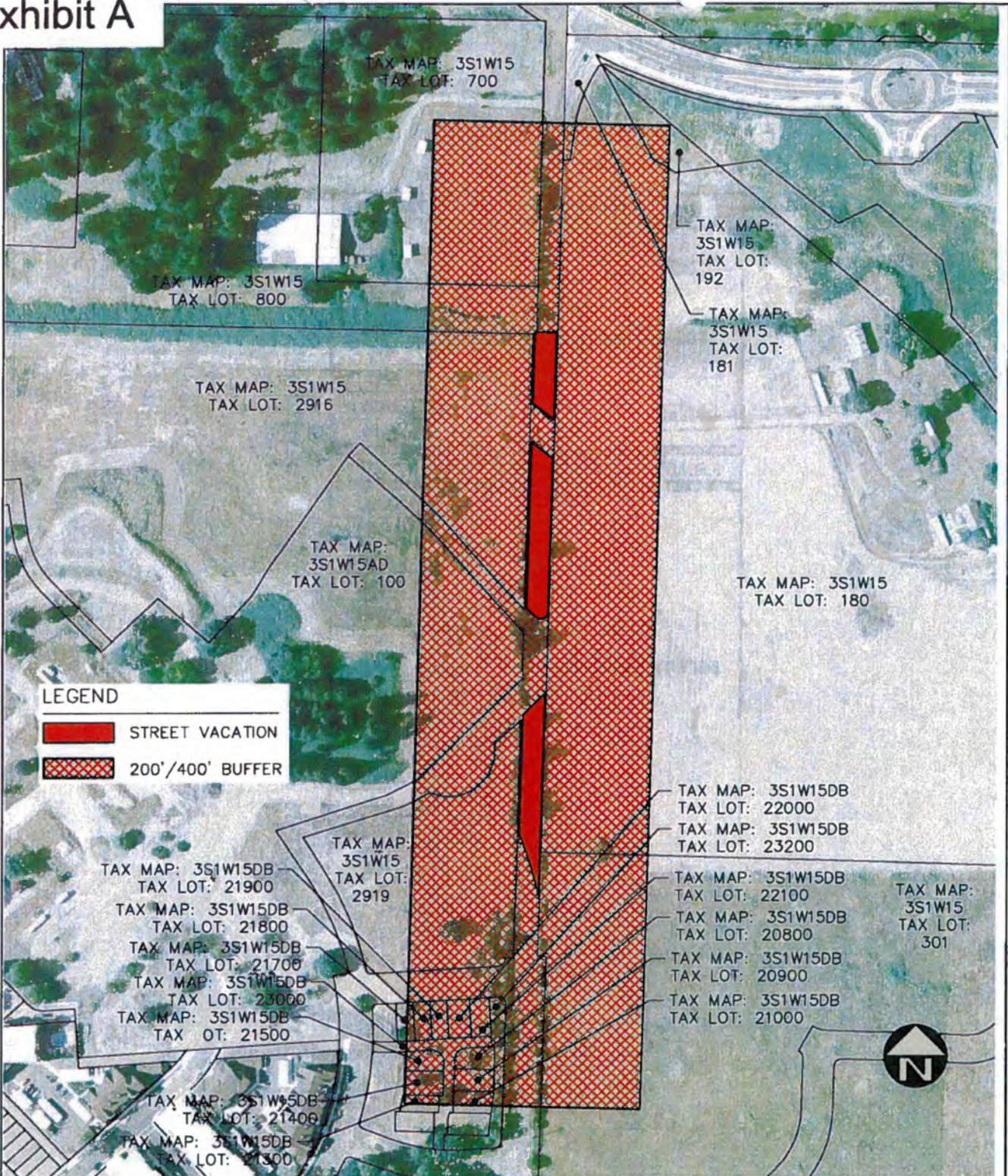
Date

01/09/14



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legals\395025.Street Vacation.Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cl



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12564 SW Main St  
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# Exhibit B

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31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
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## Street Vacation Petition

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3) Donald Bischoff  
Property Owner's Name

No Site Address; Reference Parcel 31W15 00180  
Property Street Address and Legal Description

Donald Bischoff

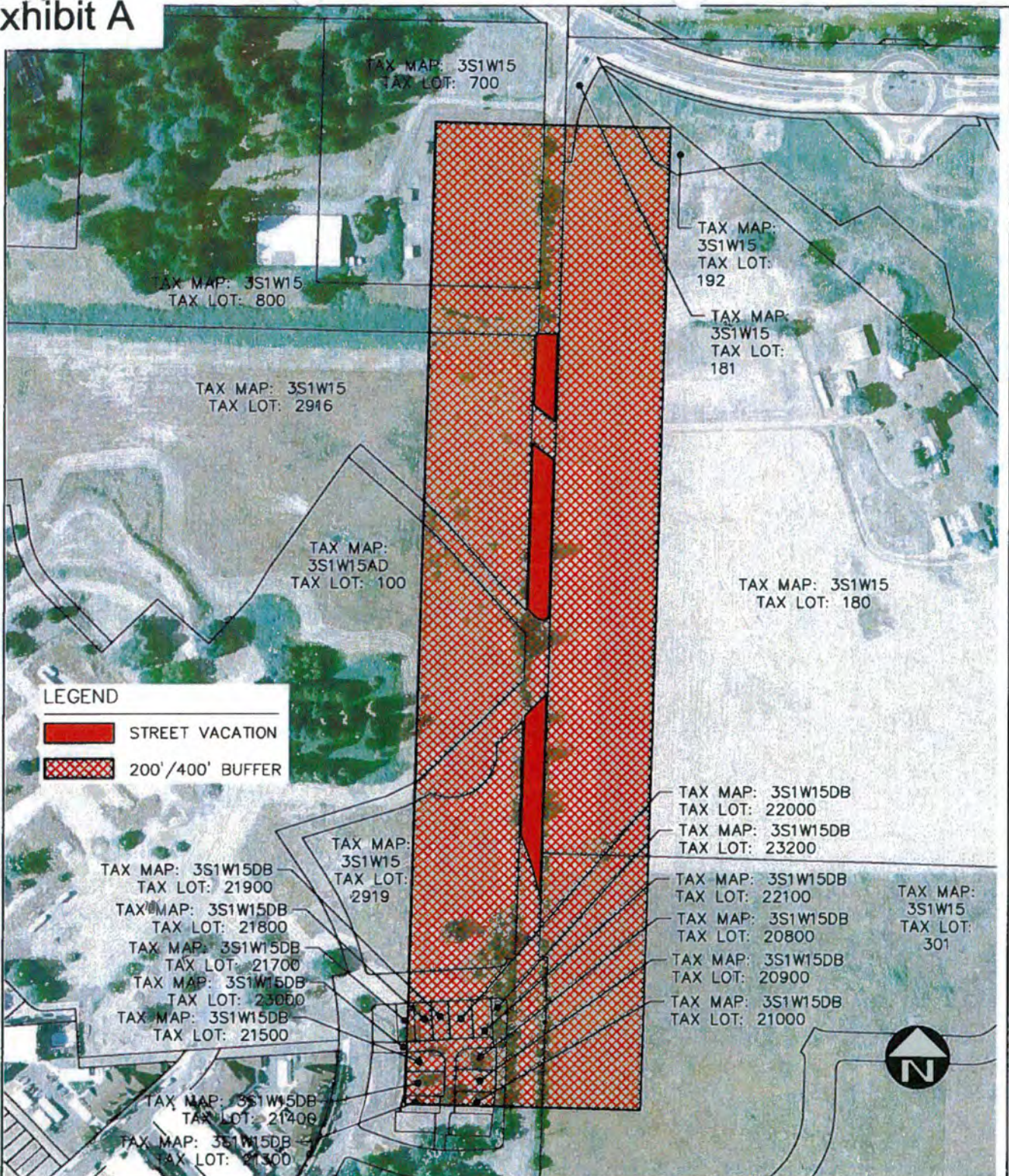
Signature

12-19-13  
Date



# Exhibit A

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# Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRES	MAILCITY	MAILSTATE	MAILZIP
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## EXHIBIT A

December 24, 2013

### LEGAL DESCRIPTION Right-of-Way Vacation

Job No. 395-025

Three tracts of land being portions of SW 110<sup>th</sup> Avenue (County Road No. 355) Right-of-Way located in the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, State of Oregon, more particularly described as follows:

#### Tract 1

BEGINNING at the Northeast corner of Tract "OO", plat of "Tonquin Woods at Villebois No. 4";

thence South 88°24'59" East, a distance of 40.00 feet to a point on the easterly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 166.59 feet;

thence leaving said easterly Right-of-Way line, North 50°46'32" West, a distance of 2.28 feet;

thence along a 770.50 foot radius tangential curve to the right, arc length of 24.11 feet, central angle of 01°47'33", chord distance of 24.10 feet, and chord bearing of North 49°52'45" West;

thence North 48°58'59" West, a distance of 25.04 feet to a point on the westerly Right-of-Way line of said SW 110<sup>th</sup> Avenue;

thence along said westerly Right-of-Way line, North 01°35'01" East, a distance of 134.28 feet to the POINT OF BEGINNING.

Containing 6,024 square feet, more or less.

#### Tract 2

BEGINNING at the most southerly corner of Tract "NN", plat of "Tonquin Woods at Villebois No. 4";

thence along the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue, North 01°35'01" East, a distance of 317.69 feet;

thence leaving said westerly Right-of-Way line, along a 829.50 foot radius non-tangential curve, concave northeasterly, with a radius point bearing North 39°24'48" East, arc length of



2.73 feet, central angle of  $00^{\circ}11'19''$ , chord distance of 2.73 feet, and chord bearing of South  $50^{\circ}40'52''$  East;

thence South  $50^{\circ}46'32''$  East, a distance of 47.79 feet to a point on the easterly Right-of-Way line of said SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South  $01^{\circ}35'01''$  West, a distance of 301.53 feet;

thence leaving said easterly Right-of-Way line, along a 15.00 foot radius non-tangential curve, concave northerly, with a radius point bearing North  $50^{\circ}40'50''$  West, arc length of 24.85 feet, central angle of  $94^{\circ}54'18''$ , chord distance of 22.10 feet, and chord bearing of South  $86^{\circ}46'19''$  West;

thence North  $45^{\circ}46'32''$  West, a distance of 24.44 feet to the POINT OF BEGINNING.

Containing 12,657 square feet, more or less.

### Tract 3

COMMENCING at the most northerly corner of Parcel 2, Partition Plat No. 2010-046;

thence along the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue, South  $01^{\circ}35'01''$  West, a distance of 68.95 feet to the POINT OF BEGINNING;

thence leaving said westerly Right-of-Way line, North  $46^{\circ}43'10''$  East, a distance of 19.16 feet;

thence along a 646.00 foot radius tangential curve to the left, arc length of 38.44 feet, central angle of  $03^{\circ}24'32''$ , chord distance of 38.43 feet, and chord bearing of North  $45^{\circ}00'54''$  East to a point on the easterly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South  $01^{\circ}35'01''$  West, a distance of 388.84 feet;

thence leaving said easterly Right-of-Way line, along a 788.00 foot radius non-tangential curve, concave westerly, with a radius point bearing South  $77^{\circ}24'40''$  West, arc length of 124.82 feet, central angle of  $09^{\circ}04'33''$ , chord distance of 124.69 feet, and chord bearing of North  $17^{\circ}07'37''$  West to a point on the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said westerly Right-of-Way line, North  $01^{\circ}35'01''$  East, a distance of 229.31 feet to the POINT OF BEGINNING.

Containing 12,139 square feet, more or less.

Basis of bearings being plat of "Tonquin Woods at Villebois No. 4", Clackamas County Survey Records.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
JULY 9, 2002  
TRAVIS C. JANSEN  
57751

RENEWS: 6/30/2015

N:\proj\395-025\09 Drawings\06 Survey\Legal\395025\Street Vacation\Legals\2013-12-23.dwg - SHEET: Legal Desc Dec. 24, 13 - 11:32 AM lcl

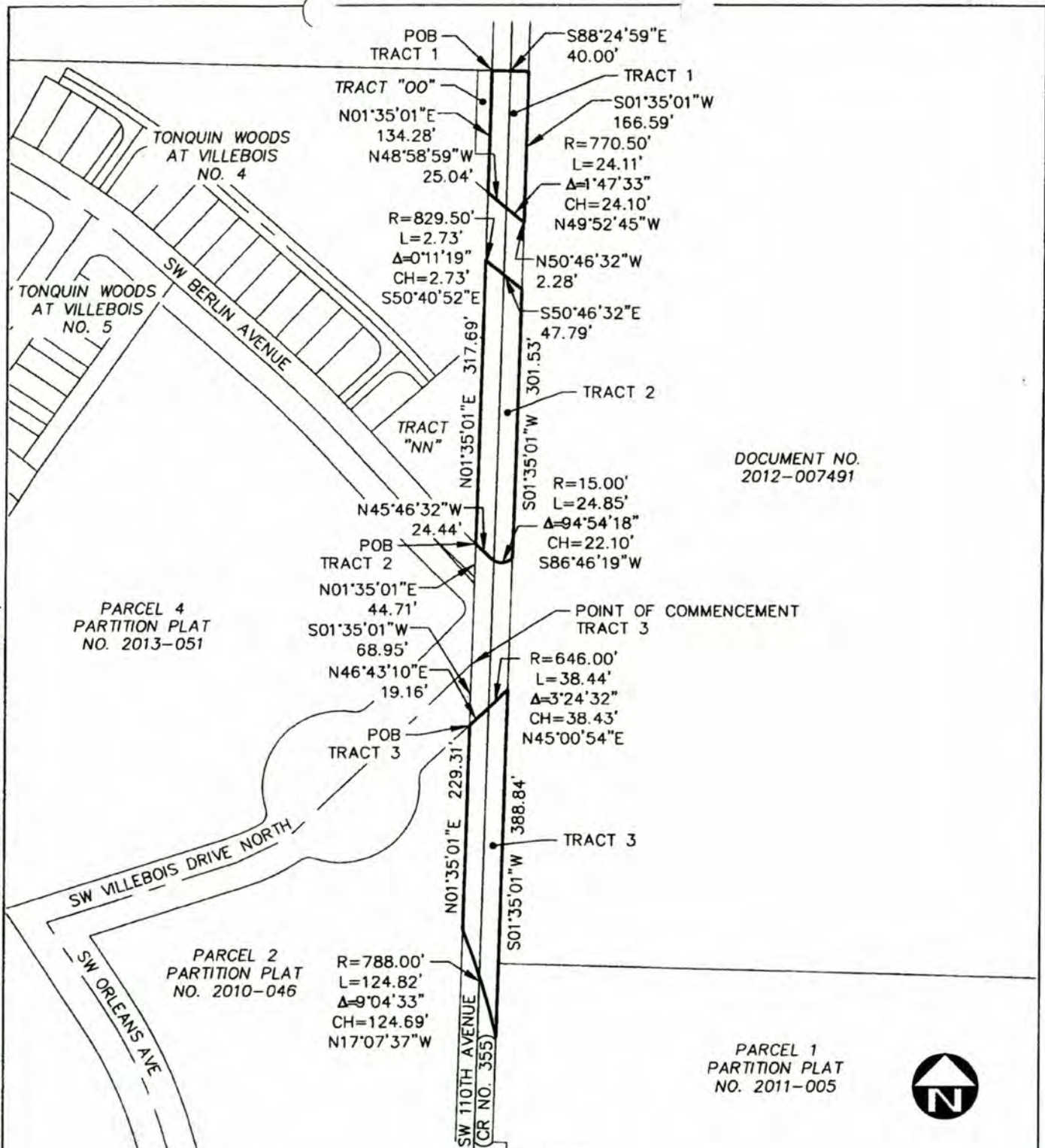


EXHIBIT A  
RIGHT-OF-WAY VACATION

DRAWN BY: CLL DATE: 12/24/13  
REVIEWED BY: TCJ DATE: 12/24/13  
PROJECT NO.: 395-025  
SCALE: 1"=150'  
PAGE 3 OF 3



12564 SW Main St  
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**DEVELOPMENT REVIEW BOARD  
RESOLUTION NO. 269**

**A RESOLUTION ADOPTING FINDINGS RECOMMENDING APPROVAL OF A REQUEST FOR THE CITY TO VACATE PORTIONS OF SW 110<sup>TH</sup> AVENUE BETWEEN SW MONT BLANC AVENUE AND SW TOOZE/BOECKMAN ROAD. STACY CONNERY, AICP, PACIFIC COMMUNITY DESIGN, INC. - REPRESENTATIVE FOR FRED GAST, POLYGON NW COMPANY- APPLICANT/PETITIONER.**

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated February 3, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

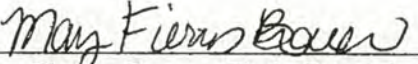
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated February 3, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein as a recommendation to the City of Wilsonville City Council:

DB14-0001 Quasi-judicial Street Vacation of Portions of SW 110<sup>th</sup> Avenue.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10<sup>th</sup> day of February, 2014 and filed with the Planning Administrative Assistant on February 11, 2014

  
\_\_\_\_\_  
Mary Fierros-Bower, Chair, Panel A  
Wilsonville Development Review Board

Attest:

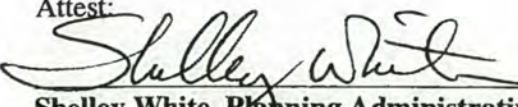
  
\_\_\_\_\_  
Shelley White, Planning Administrative Assistant

Exhibit A1  
**STAFF REPORT**  
**WILSONVILLE PLANNING DIVISION**

*SW 110th Avenue Street Vacation, PDP 3 and 4 East*  
*“Tonquin Meadows”*

**DEVELOPMENT REVIEW BOARD PANEL ‘A’**  
**QUASI-JUDICIAL PUBLIC HEARING FOR STREET VACATION**  
**STAFF REPORT**

<b>HEARING DATE</b>	February 10, 2014
<b>DATE OF REPORT:</b>	February 3, 2014
<b>APPLICATION NO.:</b>	DB14-0001 Vacation of a Portion of SW 110th Avenue Right-of-Way
<b>REQUEST/SUMMARY:</b>	The Development Review Board is being asked to review a Quasi-judicial Street Vacation
<b>LOCATION:</b>	Portions of SW 110 <sup>th</sup> Avenue between SW Mont Blanc Street and SW Tooze Road/SW Boeckman Road.
<b>ADJACENT PROPERTY OWNERS:</b>	Donald E. Bischoff and Sharon L. Lund (Tax Lot 180) Polygon at Villebois III LLC (Tax Lots 2916 and 2919) Polygon at Villebois V LLC (Tax Lot 301)
<b>PETITIONER:</b>	Fred Gast, Polygon NW Company
<b>APPLICANT’S REP.:</b>	Stacy Connery, AICP, Pacific Community Design, Inc.
<b>COMPREHENSIVE PLAN MAP DESIGNATION:</b>	Residential-Village
<b>ZONE MAP CLASSIFICATIONS:</b>	V (Village)
<b>STAFF REVIEWERS:</b>	Daniel Pauly AICP, Associate Planner Steve Adams PE, Development Engineering Manager
<b>STAFF RECOMMENDATION:</b>	<b><u>Recommend approval with Conditions</u></b> of the requested Street Vacation to City Council.



## APPLICABLE REVIEW CRITERIA

<b><u>DEVELOPMENT CODE</u></b>	
Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Subsection 4.031 (.01) L.	Authority of the Development Review Board: Street Vacations
Subsection 4.032 (.01) D.	Authority of the Planning Commission: Street Vacations
Subsection 4.033 (.01) H.	Authority of the City Council: Street Vacations
Subsection 4.034 (.07)	Street Vacation Review Standards and Procedures
<b><u>OTHER PLANNING DOCUMENTS</u></b>	
Villebois Village Master Plan	
Transportation Systems Plan	
SAP East Approval Documents	
PDP 3 East Approval Documents	
PDP 4 East Approval Documents	
<b><u>OREGON REVISED STATUTES</u></b>	
ORS 271.080	Vacation in incorporated cities; petition; consent of property owners.
ORS 271.120	Vacation hearing; determination.
ORS 271.140	Title to vacated areas.
ORS 271.150	Vacation records to be filed; costs.
ORS 271.190	Vacation consent of owners of adjoining properties; other required approval.
ORS 271.200	Vacation Petition; notice

## BACKGROUND/SUMMARY:

SW 110<sup>th</sup> Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110<sup>th</sup> and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110<sup>th</sup> Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110<sup>th</sup> Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East. The proposed vacation allows the conversion of much of the remainder of SW 110<sup>th</sup> Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110<sup>th</sup> Avenue will remain to provide access to a property on the west side of SW 110<sup>th</sup> just south of SW Tooze Road not yet proposed for development. The north-south



connectivity of SW 110<sup>th</sup> Avenue will be replaced by a new segment of SW Villebois Drive North which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman bridge. The demolition of SW 110<sup>th</sup> and construction of the new SW Villebois Drive North segment is currently planned later this year together with Polygon Homes construction of a new subdivision previously approved.



## CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant's analysis of compliance with the applicable criteria. This Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board recommend approval of the proposed application (DB14-0001) to City Council with the following conditions:

### Conditions:

- |              |  |
|--------------|--|
| <b>PF 1.</b> | Concurrently with the 110th Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110th Avenue prior to its demolition and reconfiguration of the street network. |
| <b>PF 2.</b> | For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum        |



15-foot wide easements centered on the utility. For private easements they shall be of sufficient width as needed by the private utility and as approved by the City.
<b>PF 3.</b> The future demolition of 110th Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.

#### **MASTER EXHIBIT LIST:**

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case File DB14-0001.

- A1.** Staff report and findings (this document)
- A2.** Staff's Slide Presentation (available at public hearing)
- B1.** Applicant's Submitted Materials
  - Narrative
  - Copy of Application Form
  - Signed Petition, Petition Exhibits & Property Ownership Info
  - Legal Description and Sketch
  - Copy of PDP 3E & 4E Phasing Plan
- C1.** Comments and Conditions from Engineering Division
- C2.** Comments from Public Works Department

#### **FINDINGS OF FACT:**

1. Prior land use actions include:

##### Legislative:

02PC06 - Villebois Village Concept Plan  
 02PC07A - Villebois Comprehensive Plan Text  
 02PC07C - Villebois Comprehensive Plan Map  
 02PC07B - Villebois Village Master Plan  
 02PC08 - Village Zone Text  
 04PC02 - Adopted Villebois Village Master Plan  
 LP-2005-02-00006 - Revised Villebois Village Master Plan  
 LP-2005-12-00012 - Revised Villebois Village Master Plan (Parks and Recreation)  
 LP13-0005 - Revised Villebois Village Master Plan

##### Quasi Judicial:

04 DB 22 et seq - SAP-East  
 DB12-0042 et seq - PDP-3E Tonquin Meadows  
 DB12-0050 et seq - PDP-4E Tonquin Meadows No. 2  
 DB13-0013 et seq - PDP-4C Polygon Northwest at Villebois No. 2  
 AR13-0046 PDP 3 and 4 East Phasing Amendment

2. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

## **CONCLUSIONARY FINDINGS:**

### **Planning and Land Development Ordinance**

#### ***Subsections 4.031 (.01) L., 4.032 (.01) D., Subsection 4.033 (.01) H. Authority to Review Street Vacations***

1. **Review Criteria:** These subsections define the roles of the Development Review Board, the Planning Commission, and City Council for street vacations. The Development Review Board is authorized to make recommendations to City Council for street vacations where a specific development application has been filed for the subject property. The Planning Commission is authorized to make recommendations to City Council for street vacations where no specific development application has been filed for the subject property. City Council takes final action on street vacation applications.

**Finding:** These criteria are satisfied.

**Details of Finding:** Specific development applications have been filed and approved by the City for the land being vacated subject to approval of the street vacation. The land is approved to be development as private park space. See case files DB12-0042 (Preliminary Development Plan, Villebois Phase 3 East), DB12-0048 (Final Development Plan for Parks and Open Space, Villebois Phase 3 East), DB12-0050 (Preliminary Development Plan, Villebois Phase 4 East), and DB12-0054 (Final Development Plan for Parks and Open Space, Villebois Phase 4 East). Due to the previous submission of specific development application for the subject land, the Development Review Board is reviewing the street vacation to make a recommendation to City Council. The City Council will then take the final action on the request.

#### ***Subsection 4.034 (.07) Standards for Street Vacation***

2. **Review Criteria:** "Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.

**Finding:** These criteria are satisfied.

**Details of Finding:** As shown in Findings 9 -16 below, the request is being reviewed in accordance with ORS 271.

### **Previous Land Use Approvals**

#### ***DB12-0042 SAP-East PDP 3E, Preliminary Development Plan, Condition of Approval PFA 34.***

3. **Review Criteria:** "The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110th Avenue shall be demolished with construction of the new roadway.



With completion of this roadway construction, 110th Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.”

**Finding:** These criteria are satisfied.

**Details of Finding:** PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110th Avenue will be demolished with roadway construction. Portions of 110th Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110th Avenue. The Final Plat for the 1st phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110th Avenue will allow the Applicant to comply with Condition PFA 34.

### **Transportation Systems Plan**

***Table 5-4. Higher Priority Projects (Southwest Quadrant) Roadway Extensions***

4. **Review Criteria:**

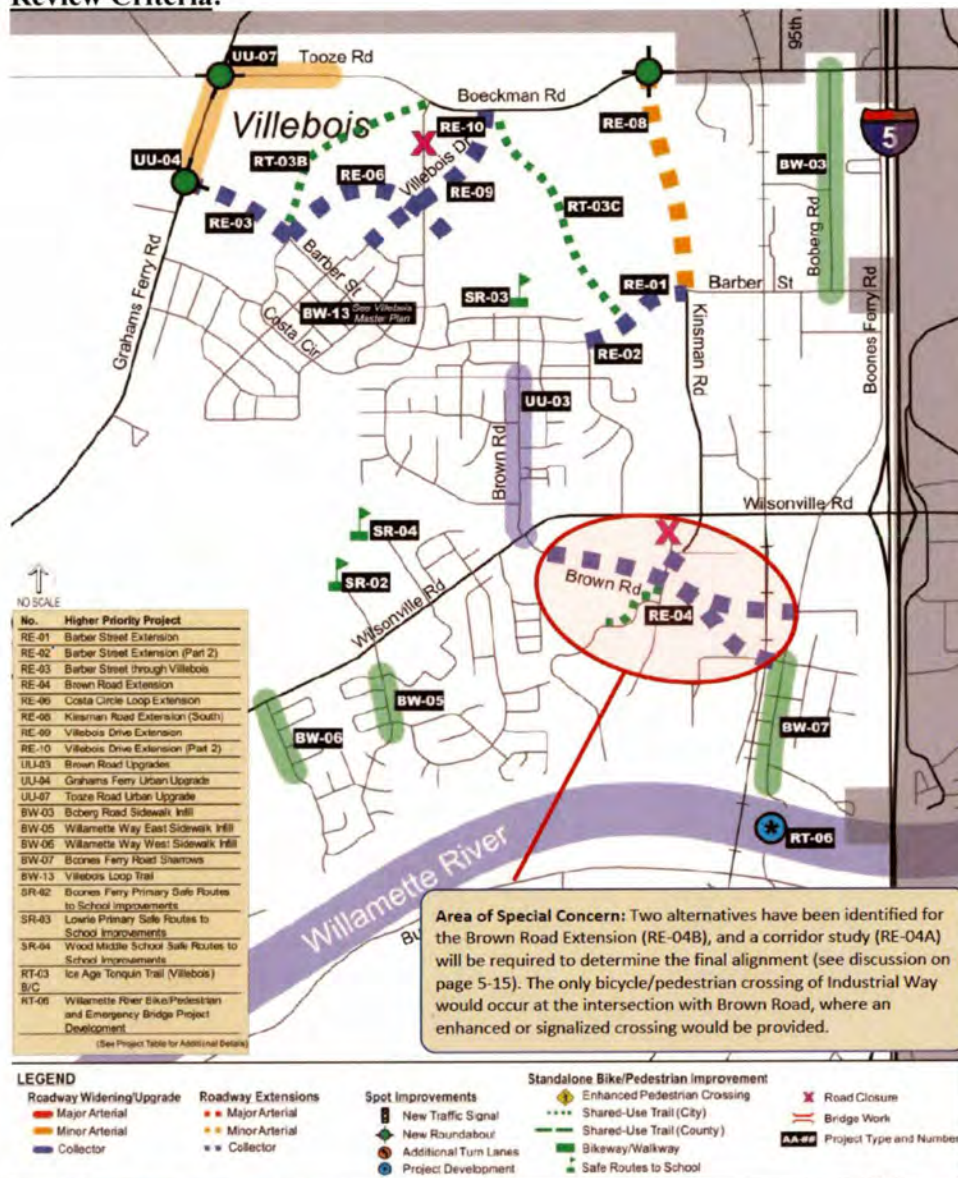
RE-09	Villebois Drive Extension	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Costa Circle to Coffee Lake Drive	\$390,000
RE-10	Villebois Drive Extension (Part 2)	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Coffee Lake Drive to Boeckman Road	\$250,000

**Finding:** These criteria are satisfied.

**Details of Finding:** The listed extensions of Villebois Drive in the Transportation System Plan are planned to be constructed as part of Construction Phase 1 of PDP 3 and 4 East as shown in the phasing plan approved in Case File AR13-0046, and will replace the north-south connectivity between Villebois and SW Boeckman Road/SW Tooze Road.

Figure 5-5. Higher Priority Projects (Southwest Quadrant)

5. Review Criteria:



**Finding:** This criterion is satisfied.

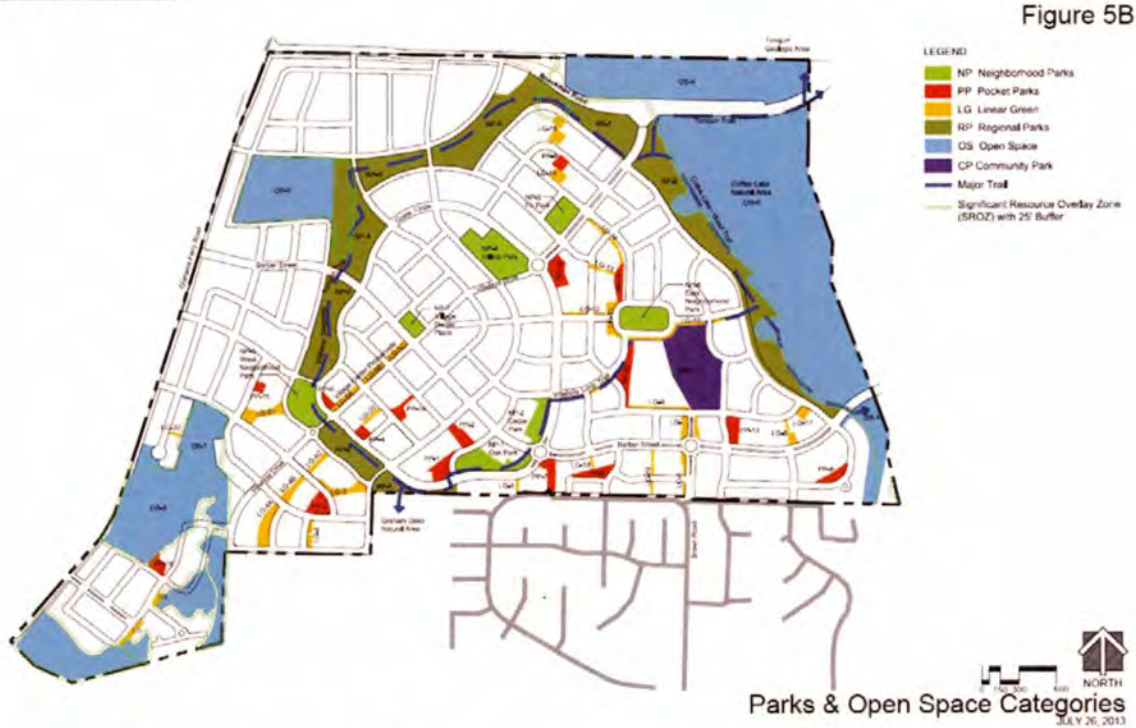
**Details of Finding:** The closure of SW 110<sup>th</sup> is shown by the red "X" in Figure 5-5 in association with projects RE-09 and RE-10, extension of SW Villebois Drive.



Villebois Village Master Plan

*Figure 5B Parks and Open Space Categories*

6. Review Criteria:



**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show the intention for the portions of SW 110<sup>th</sup> being vacated to become private parks.

**Figure 7 Street Plan**

7. **Review Criteria:**



**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show how SW 110<sup>th</sup> is not planned as part of the circulation and street system in the Villebois Village Master Plan.



**Figure 8. Proposed Arterial and Collector System**

8. **Review Criteria:**

Figure 8



**Finding:** This criterion is satisfied.

**Details of Finding:** Figure 8 of the Villebois Village Master Plan shows SW 110<sup>th</sup> Avenue as an “Existing street replaced by the Villebois Circulation Plan.”

**Oregon Revised Statutes**

***ORS 271.080 (1) Petition for Street Vacation in Incorporated Cities***

9. **Review Criterion:** “Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.”

**Finding:** This criterion is satisfied.

**Details of Finding:** Polygon Homes has filed the described petition. Previous land use actions by the City approve Polygon, contingent on the vacation, to construct private parks on the vacated right-of-way. The reason for the vacation is clear in previous land use approvals and the record of this request, including the connectivity provided by SW 110<sup>th</sup> being provided by planned new roads.

***ORS 271.080 (2) Consent of Adjoining Property Owners***

10. **Review Criterion:** “There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds

in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing."

**Finding:** This criterion is satisfied.

**Details of Finding:** The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

#### ***ORS 271.090 Submission of Street Vacation Petition to City***

11. **Review Criteria:** "The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The petition has been submitted to the City, and Polygon has been informed of the hearing dates before the Development Review Board and City Council.

#### ***ORS 271.100 City Action of Street Vacation Petition***

12. **Review Criteria:** "The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The vacation of these portions of SW 110<sup>th</sup> have long been showed in City adopted master plans and a development application was approved by the City to develop the vacated right-of-way contingent on approval of the vacation. The City is setting and holding public hearings to consider the petition.

#### ***ORS 271.110 Notice of Hearing***

13. **Review Criteria:** This section prescribes the notices required for street vacation hearings including newspaper publication and posting of notices along the right-of-way to be vacated.

**Finding:** These criteria are satisfied.

**Details of Finding:** The noticing requirements required by ORS 271.110 have or will be met prior to the hearing.



***ORS 271.120 Hearing; determination***

14. **Review Criteria:** "At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest."

**Finding:** These criteria are satisfied.

**Details of Finding:** The consent of the owners of the requisite area have been obtained as shown with the attached petitions, notice has been given as prescribed. Public policy, as shown in the Villebois Village Master Plan and Transportation Systems Plan, has long been to vacate the proposed area upon replacement with streets planned as part of the Villebois development. After receiving a recommendation from the Development Review Board the City Council would vacate the street by ordinance.

***ORS 271.140 Title to Vacated Areas***

15. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

***ORS 271.150 Vacation Records to be Filed***

16. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the ordinance will be recorded as required by this section, the cost of which will be borne by the petitioner.

**RECEIVED**  
JAN 06 2014

BY:.....

## **NARRATIVE & COMPLIANCE REPORT**

### **SW 110<sup>TH</sup> AVENUE ROW VACATION**

#### **TABLE OF CONTENTS**

<b>I. PROPOSAL SUMMARY</b>	<b>2</b>
GENERAL INFORMATION	2
REQUEST & PROJECT DESCRIPTION	2
<b>II. WILSONVILLE PLANNING &amp; LAND DEVELOPMENT ORDINANCE</b>	<b>3</b>
4.031 AUTHORITY OF THE DEVELOPMENT REVIEW BOARD	3
4.033 AUTHORITY OF THE CITY COUNCIL	3
4.034 APPLICATION REQUIREMENTS	3
<b>III. CONDITIONS OF APPROVAL</b>	<b>4</b>
DB12-0042 SAP-EAST PDP 3E, PRELIMINARY DEVELOPMENT PLAN	4
<b>IV. OREGON ADMINISTRATIVE RULE (ORS) 271</b>	<b>4</b>
271.080 VACATION IN INCORPORATED CITIES; PETITION; CONSENT OF PROPERTY OWNERS	4
271.120 HEARING; DETERMINATION	5
271.140 TITLE TO VACATED AREAS	5
271.150 VACATION RECORDS TO BE FILED; COSTS	6
271.190 CONSENT OF OWNERS OF ADJOINING PROPERTY; OTHER REQUIRED APPROVAL	6
271.200 PETITION; NOTICE	6
<b>V. CONCLUSION</b>	<b>7</b>

#### **LIST OF EXHIBITS**

- A COPY OF APPLICATION FORM**
- B SIGNED PETITION, PETITION EXHIBITS & PROPERTY OWNERSHIP INFO**
- C LEGAL DESCRIPTION AND SKETCH**
- D COPY OF PDP 3E & PDP 4E PHASING PLAN**



City of Wilsonville  
Exhibit B1 DB14-0001



## **I. PROPOSAL SUMMARY**

### **GENERAL INFORMATION**

Applicant/Property Owner:

**Polygon Northwest Company**

Applicant's Representative:

**Pacific Community Design, Inc.**  
12564 SW Main Street  
Tigard, OR 97223  
(503) 941-9484  
Contacts: Stacy Connery, AICP  
Patrick Espinosa, PE  
Travis Jansen, PLS

Subject Site:

Portions of SW 110<sup>th</sup> Avenue ROW in  
Villebois SAP East, PDP 3E and PDP  
4E (Tonquin Meadows & Tonquin  
Meadows No. 2)

Abutting Tax Lots:

2916, 2919, 180 & 301 on Map  
3S1W15

### **REQUEST & PROJECT DESCRIPTION**

The Applicant requests approval of a Street Vacation for portions of SW 110<sup>th</sup> Avenue ROW within Villebois PDP 3E and PDP 4E (also known as Tonquin Meadows & Tonquin Meadows No. 2). Exhibit C is a legal description and sketch that depicts the area of the proposed ROW vacation.

The City approved SAP East PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile No. DB12-0053) on November 19, 2012. PDP 3E and PDP 4E phasing was amended on November 19<sup>th</sup>, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II areas of PDP 3E and PDP 4E to occur concurrently (see Phasing Plan in Exhibit D). Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. Street improvements to be provided with PDP 3E and PDP 4E include the construction of Costa Circle East and SW Villebois Drive North, replacing the connections provided through the portions of SW 110<sup>th</sup> Avenue within the subject area. The existing transition between Costa Circle and 110<sup>th</sup> Avenue will be demolished with this roadway construction. Portions of 110<sup>th</sup> Avenue within the subject site will be closed with completion of roadway construction. The locations of LG-15, NP-5 (Fir Park), and PP-12 shown on the PDP 3E & PDP 4E Phasing Plan (see Exhibit D) include the areas of proposed ROW vacation. The portions of 110<sup>th</sup> Avenue ROW retained within the site will be incorporated into Stockholm Drive, Berlin Avenue, Villebois Drive N, and SW Costa Circle East, respectively. Vacation of 110<sup>th</sup> Avenue ROW within the subject site is needed to affect the planned change in circulation and to establish the planned parks.



At this time, land development has not been proposed or approved for Tax Lots 700 and 800 on Map 3S1W15. Accordingly, the northern limit of the ROW vacation area is the southern property line of Tax Lot 800. Sufficient area south of the driveway of Tax Lot 800 remains for turnaround purposes.

Compliance with applicable sections of the City of Wilsonville Planning & Land Development Ordinance are addressed in Section II of this Narrative. Section III addresses compliance with the relevant conditions of approval of Casefile No. DB12-0042. Section III addresses compliance with ORS 271.

## **II. WILSONVILLE PLANNING & LAND DEVELOPMENT ORDINANCE**

### **4.031 AUTHORITY OF THE DEVELOPMENT REVIEW BOARD**

(.01) As specified in Chapter 2 of the Wilsonville Code and except as specified herein, the Board shall have authority to act on the following types of applications:

- L. Street vacations, where a specific development application has been filed for the subject property. If no specific development has been filed for the subject property, the vacation request shall be considered by the Planning Commission. Action of the Planning Commission or Board on a street vacation request shall be a recommendation to the City Council.

**Response:** The area of SW 110<sup>th</sup> Avenue to be vacated is within SAP East PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile No. DB12-0053), which were approved on November 12, 2012. The proposed ROW vacation is subject to review by the DRB, which will make a recommendation to City Council.

### **4.033 AUTHORITY OF THE CITY COUNCIL**

(.01) Upon appeal, the City Council shall have final authority to act on all applications filed pursuant to Chapter 4 of the Wilsonville Code, with the exception of applications for expedited land divisions, as specified in Section 4.232. Additionally, the Council shall have final authority to interpret and enforce the procedures and standards set forth in this Chapter and shall have final decision-making authority on the following:

- H. Final actions on street vacation applications.

**Response:** As described above, the proposed street vacation is subject to initial review by the DRB. The Applicant acknowledges that the City Council has final decision-making authority on the proposed ROW vacation.

### **4.034 APPLICATION REQUIREMENTS**

Applications shall be reviewed as follows:

(.07) Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.

**Response:** Compliance with the applicable sections of ORS 271 is addressed in Section IV of this Narrative.



### **III. CONDITIONS OF APPROVAL**

#### **DB12-0042 SAP-EAST PDP 3E, PRELIMINARY DEVELOPMENT PLAN**

**PFA 34.** The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110<sup>th</sup> Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110<sup>th</sup> Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.

**Response:** PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110<sup>th</sup> Avenue will be demolished with roadway construction. Portions of 110<sup>th</sup> Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110<sup>th</sup> Avenue. The Final Plat for the 1<sup>st</sup> phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110<sup>th</sup> Avenue will allow the Applicant to comply with Condition PFA 34.

### **IV. OREGON ADMINISTRATIVE RULE (ORS) 271**

#### **271.080 VACATION IN INCORPORATED CITIES; PETITION; CONSENT OF PROPERTY OWNERS**

- (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.
- (2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street,



but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing.

**Response:** This application is a petition for vacation of portions of SW 110<sup>th</sup> Avenue ROW, as depicted on the attached legal description and sketch (see Exhibit C). This Narrative describes the purpose of the proposed street vacation. Exhibit B includes a copy of the signed petition with an attached map and list that demonstrates the areas of proposed ROW vacation, and the abutting properties and real property affected thereby. The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

#### **271.120 HEARING; DETERMINATION**

At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

**Response:** The Applicant understands that the governing body shall hear the petition and objections, and determine whether the requirements for street vacation have been met. Compliance with ORS 271.080 is addressed above. The signed petition is provided as Exhibit B. A legal description and sketch are provided as Exhibit C.

#### **271.140 TITLE TO VACATED AREAS**

The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the



abutting property on such side. If a public square is vacated the title thereto shall vest in the city.

**Response:** The Applicant understands that the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

#### **271.150 VACATION RECORDS TO BE FILED; COSTS**

A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**Response:** ORS 271.150 addresses the final ordinance procedure and accompanying fee for filing and recording. The Applicant acknowledges that the petitioner bears the recording cost and the cost of preparing and filing the certified copy of the ordinance and map, and will carry out this responsibility at the time when the final ordinance is prepared.

#### **271.190 CONSENT OF OWNERS OF ADJOINING PROPERTY; OTHER REQUIRED APPROVAL**

No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

**Response:** Compliance with ORS 271.080 is addressed above. The area of proposed ROW vacation is not within 5,000 feet of a harbor or pierhead line of a port.

#### **271.200 PETITION; NOTICE**

- (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.
- (2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

**Response:** This application is a petition to the City to vacate portions of ROW, as depicted on the attached legal description and sketch (see Exhibit C). This Narrative describes the circumstance of the proposed street vacation. A copy of the petition signed by abutting property owners, who are also more than 2/3 of owners of real property affected thereby, and a list of the names of the affected property owners is provided as Exhibit B.

## **V. CONCLUSION**

This narrative and the attached exhibits demonstrate compliance with the applicable provisions of the City of Wilsonville Planning & Land Development Ordinance, relevant conditions of approval, and ORS 271. Therefore, the Applicant respectfully requests approval of the proposed street vacation.



# **EXHIBIT A**

## **Copy of Application**

# CITY OF WILSONVILLE

29799 SW Town Center Loop East  
Wilsonville, OR 97070

Phone: 503.682.4960

Fax: 503.682.7025

Web: [www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)

Pre-Application meeting date:

## Planning Division

### Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

#### TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

#### Applicant:

Polygon Northwest Company (Fred Gast)

Address: 109 E. 13TH ST., Vancouver, WA 98660

Phone: 360-695-7700

Fax: 360-693-4442

E-mail: [fred.gast@polygonhomes.com](mailto:fred.gast@polygonhomes.com)

#### Property Owner:

same as applicant

Address:

Phone:

Fax:

E-mail:

#### Authorized Representative:

Pacific Community Design (Stacy Connery)

Address: 12564 SW Main Street, Tigard, Oregon 97223

Phone: 503-941-9484

Fax: 503-941-9485

E-mail: [stacy@pacific-community.com](mailto:stacy@pacific-community.com)

#### Property Owner's Signature:

Printed Name: Fred Gast

Date: 11/15/2013

#### Applicant's Signature (if different from Property Owner):

Printed Name:

Date:

#### Site Location and Description:

Project Address if Available: Suite/Unit

Project Location: SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Tax Map #(s): 3 1W 15 Tax Lot #(s): County: ☐ Washington ☒ Clackamas

Request: Vacation of ROW along remaining portions of SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Project Type: Class I ☐ Class II ☐ **Class III** ☒

☒ Residential

☐ Commercial

☐ Industrial

☐ Other (describe below)

#### Application Type:

☐ Annexation

☐ Appeal

☐ Comp Plan Map Amend

☐ Conditional Use

☐ Final Plat

☐ Major Partition

☐ Minor Partition

☐ Parks Plan Review

☐ Plan Amendment

☐ Planned Development

☐ Preliminary Plat

☐ Request to Modify Conditions

☐ Request for Special Meeting

☐ Request for Time Extension

☐ Signs

☐ Site Design Review

☐ SROZ/SRIR Review

☐ Staff Interpretation

☐ Stage I Master Plan

☐ Stage II Final Plan

☐ Type C Tree Removal Plan

☐ Tree Removal Permit (B or C)

☐ Temporary Use

☐ Variance

☐ Villebois SAP

☐ Villebois PDP

☐ Villebois PDP

☐ Waiver

☐ Zone Map Amendment

☒ Other Street Vacation

Exhibit C



# CITY OF WILSONVILLE

29799 SW Town Center Loop East  
Wilsonville, OR 97070  
Phone: 503.682.4960  
Fax: 503.682.7025

Web: [www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)

Pre-Application meeting date:

## Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

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Please PRINT legibly

#### Applicant:

Polygon Northwest Company (Fred Gast)

Address: 109 E. 13TH ST., Vancouver, WA 98660

Phone: 360-695-7700

Fax: 360-693-4442

E-mail: [fred.gast@polygonhomes.com](mailto:fred.gast@polygonhomes.com)

#### Property Owner:

same as applicant

Address:

Phone:

Fax:

E-mail:

#### Authorized Representative:

Pacific Community Design (Stacy Connery)

Address: 12564 SW Main Street, Tigard, Oregon 97221

Phone: 503-941-9484

Fax: 503-941-9485

E-mail: [stacy@pacific-community.com](mailto:stacy@pacific-community.com)

#### Property Owner's Signature:

Printed Name: Fred Gast

Date: 11/15/2013

#### Applicant's Signature (if different from Property Owner):

Printed Name:

Date:

#### Site Location and Description:

Project Address if Available: Suite/Unit

Project Location: SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Tax Map #(s): 3 1W 15 Tax Lot #(s): County: ☐ Washington ☒ Clackamas

Request: Vacation of ROW along remaining portions of SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Project Type: Class I ☐ Class II ☐ **Class III ☒**

☒ Residential

☐ Commercial

☐ Industrial

☐ Other (describe below)

#### Application Type:

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☐ Stage I Master Plan

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☐ Variance

☐ Villebois SAP

☐ Villebois PDP

☐ Villebois PDP

☐ Waiver

☐ Zone Map Amendment

☒ Other Street Vacation

Exhibit C

## **EXHIBIT B**

**Signed Petition, Petition Exhibits & Property  
Ownership Info**



## Street Vacation Petition

---

This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

### REQUIRED SIGNATURES:

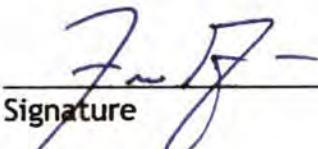
We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110<sup>th</sup> Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

- 1) Polygon at Villebois III, LLC

\_\_\_\_\_  
Property Owner's Name

No site address; Reference Parcel 31W15 02916  
\_\_\_\_\_  
Property Street Address and Legal Description

No site address; Reference Parcel 31W15 02919  
\_\_\_\_\_  
Property Street Address and Legal Description

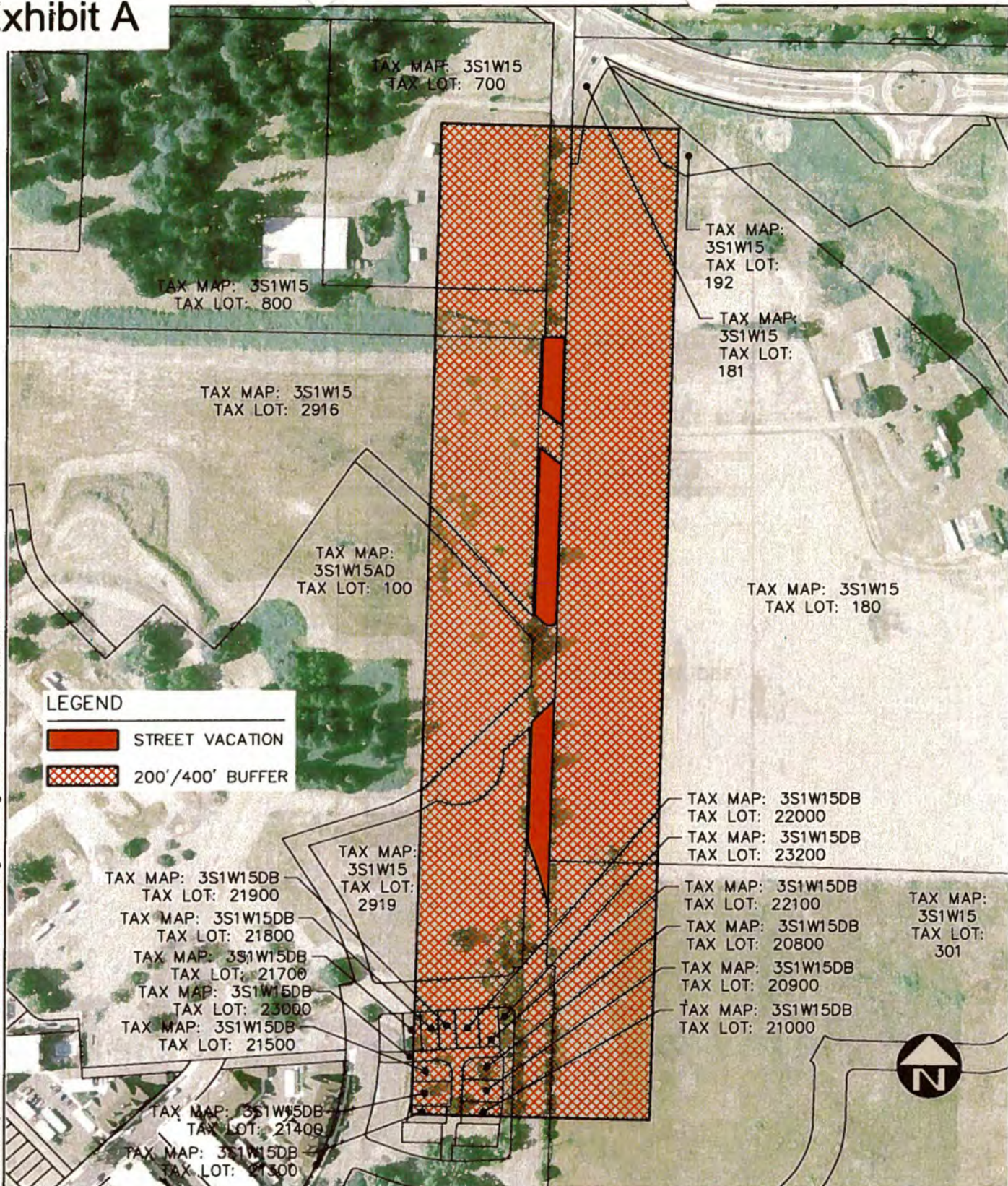
  
\_\_\_\_\_  
Signature

01/09/14  
\_\_\_\_\_  
Date



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legals\395025.Street Vacation Lots.2013-12-12.dwg - SHEET: Legal Desc. Dec. 18, 13 - 10:52 AM cl



DRAWN BY: CLL DATE: 12/12/13  
 REVIEWED BY: TCJ DATE: 12/12/13  
 PROJECT NO.: 395-025  
 SCALE: 1"=250'  
 PAGE 1 OF 2



12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485

Exhibit C



TAX MAP	TAX LOT #
3 SOUTH 1 WEST SECTION 15	180
	181
	192
	301
	700
	800
	2916
	2919
3 SOUTH 1 WEST SECTION 15 AD	100
3 SOUTH 1 WEST SECTION 15 DB	20800
	20900
	21000
	21300
	21400
	21500
	21700
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	22000
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 SCALE: NTS  
PAGE 2 OF 2



12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485

Exhibit C

# Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRESS	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
31W15 00301	Polygon At Villebois LLC	Polygon At Villebois LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 00181	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15 00192	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15AD00100	Rcs-Villebois Dev LLC	Rcs-Villebois Dev LLC		371 Centennial Pkwy #200	Louisville	CO	80027
31W15 02916	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 02919	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15DB20800	Lorenzo & Laura Young	Lorenzo & Laura	Young	28949 SW Costa Cir E	Wilsonville	OR	97070
31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21000	Julie Helmke	Julie	Helmke	28969 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21300	Sheryl Dischner	Sheryl	Dischner	28962 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21400	James Woodin	James	Woodin	28954 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21500	Austin Joyner	Austin	Joyner	28926 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21700	Juan & Michele Vasquez	Juan & Michele	Vasquez	11124 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Milian Stewart	Milian	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22000	Judi Campbell	Judi	Campbell	11090 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22100	Matthew & Karlee Wyckoff	Matthew & Karlee	Wyckoff	11082 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB23000	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209
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## Street Vacation Petition

---


This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

### REQUIRED SIGNATURES:

We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110<sup>th</sup> Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

- 2) Polygon at Villebois V, LLC  
\_\_\_\_\_  
Property Owner's Name

29092 SW 110th Ave, Wilsonville, Oregon 97070; Reference Parcel 31W15 00301  
\_\_\_\_\_  
Property Street Address and Legal Description

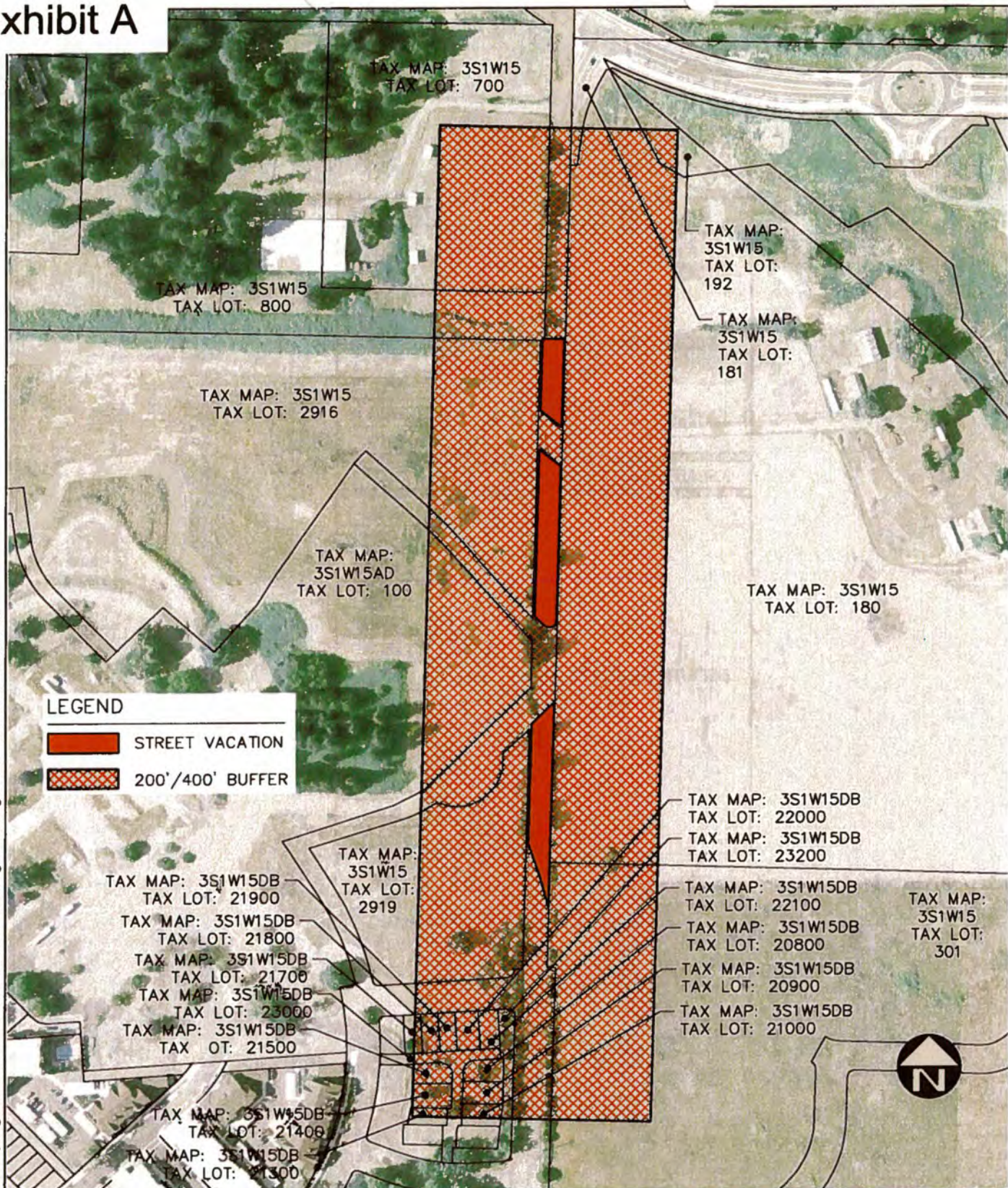
  
\_\_\_\_\_  
Signature

01/09/14  
\_\_\_\_\_  
Date



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legals\395025.Street Vacation.Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cl



DRAWN BY: CLL DATE: 12/12/13  
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12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485

Exhibit C



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 [F] 503-941-9485

Exhibit C

# Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRESS	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
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31W15DB20800	Lorenzo & Laura Young	Lorenzo & Laura	Young	28949 SW Costa Cir E	Wilsonville	OR	97070
31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21000	Julie Helmke	Julie	Helmke	28969 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21300	Sheryl Dischner	Sheryl	Dischner	28962 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21400	James Woodin	James	Woodin	28954 SW Orleans Ave	Wilsonville	OR	97070
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31W15DB21700	Juan & Michele Vasquez	Juan & Michele	Vasquez	11124 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Milian Stewart	Milian	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22000	Judi Campbell	Judi	Campbell	11090 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22100	Matthew & Karlee Wyckoff	Matthew & Karlee	Wyckoff	11082 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB23000	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209
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## Street Vacation Petition

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This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

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3) Donald Bischoff  
Property Owner's Name

No Site Address; Reference Parcel 31W15 00180  
Property Street Address and Legal Description

Donald Bischoff

Signature

12-19-13

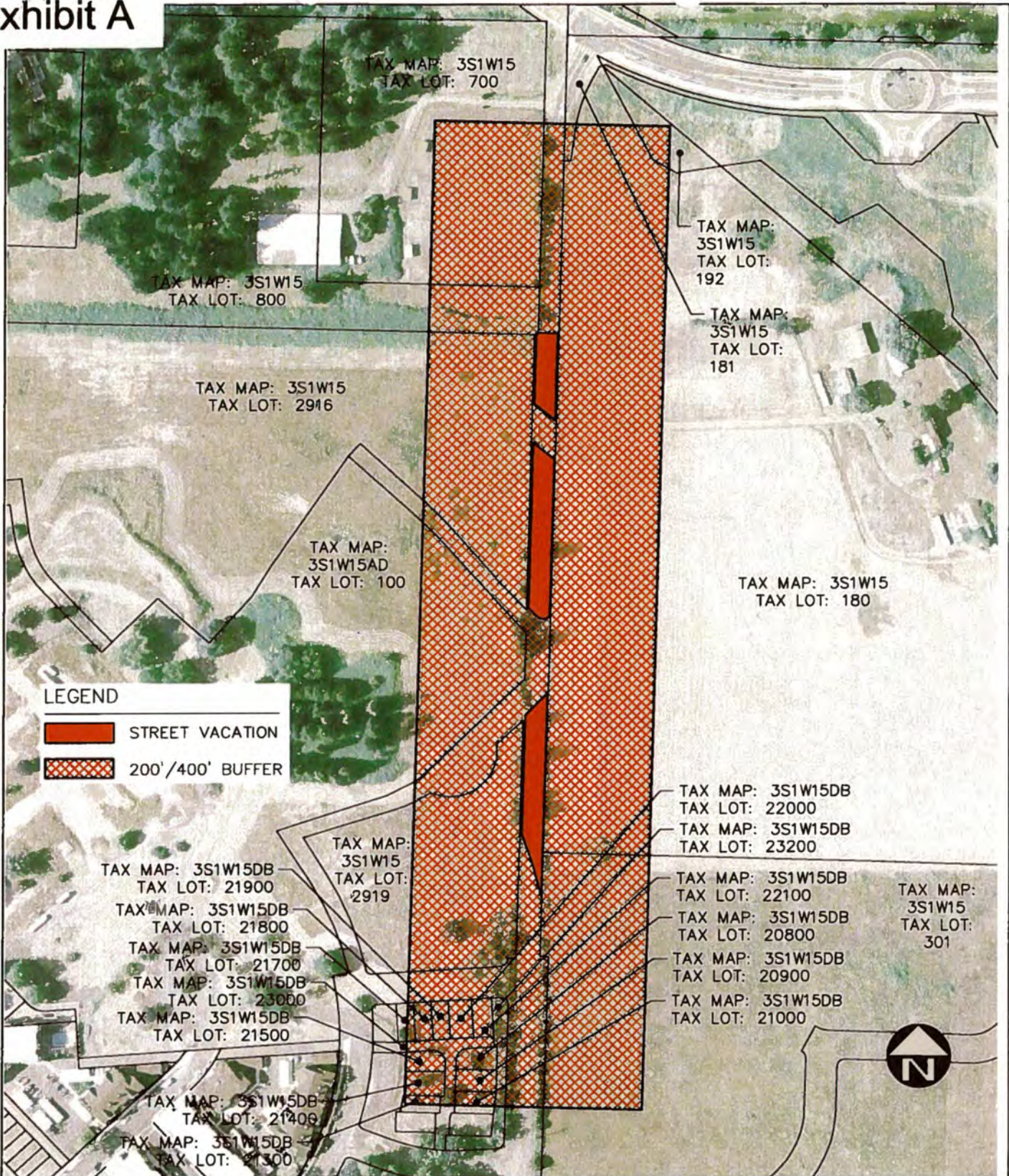
Date

Exhibit C



# Exhibit A

N:\proj\395-025\08 Drawings\06 Survey\Legals\395025.Street Vacation Lots.2013.12.12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cl



DRAWN BY: CLL DATE: 12/12/13  
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12564 SW Main St  
 Tigard, OR 97223  
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Exhibit C



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 Tigard, OR 97223  
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Exhibit C

# Exhibit B

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31W15DB21500	Austin Joyner	Austin	Joyner	28926 SW Orleans Ave	Wilsonville	OR	97070
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31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Millian Stewart	Millian	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22000	Judi Campbell	Judi	Campbell	11090 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22100	Matthew & Karlee Wyckoff	Matthew & Karlee	Wyckoff	11082 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB23000	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209
31W15DB23200	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209



# **EXHIBIT C**

## **Legal Description & Sketch**

## EXHIBIT A

December 24, 2013

### LEGAL DESCRIPTION Right-of-Way Vacation

Job No. 395-025

Three tracts of land being portions of SW 110<sup>th</sup> Avenue (County Road No. 355) Right-of-Way located in the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, State of Oregon, more particularly described as follows:

#### Tract 1

BEGINNING at the Northeast corner of Tract "OO", plat of "Tonquin Woods at Villebois No. 4";

thence South 88°24'59" East, a distance of 40.00 feet to a point on the easterly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 166.59 feet;

thence leaving said easterly Right-of-Way line, North 50°46'32" West, a distance of 2.28 feet;

thence along a 770.50 foot radius tangential curve to the right, arc length of 24.11 feet, central angle of 01°47'33", chord distance of 24.10 feet, and chord bearing of North 49°52'45" West;

thence North 48°58'59" West, a distance of 25.04 feet to a point on the westerly Right-of-Way line of said SW 110<sup>th</sup> Avenue;

thence along said westerly Right-of-Way line, North 01°35'01" East, a distance of 134.28 feet to the POINT OF BEGINNING.

Containing 6,024 square feet, more or less.

#### Tract 2

BEGINNING at the most southerly corner of Tract "NN", plat of "Tonquin Woods at Villebois No. 4";

thence along the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue, North 01°35'01" East, a distance of 317.69 feet;

thence leaving said westerly Right-of-Way line, along a 829.50 foot radius non-tangential curve, concave northeasterly, with a radius point bearing North 39°24'48" East, arc length of



2.73 feet, central angle of  $00^{\circ}11'19''$ , chord distance of 2.73 feet, and chord bearing of South  $50^{\circ}40'52''$  East;

thence South  $50^{\circ}46'32''$  East, a distance of 47.79 feet to a point on the easterly Right-of-Way line of said SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South  $01^{\circ}35'01''$  West, a distance of 301.53 feet;

thence leaving said easterly Right-of-Way line, along a 15.00 foot radius non-tangential curve, concave northerly, with a radius point bearing North  $50^{\circ}40'50''$  West, arc length of 24.85 feet, central angle of  $94^{\circ}54'18''$ , chord distance of 22.10 feet, and chord bearing of South  $86^{\circ}46'19''$  West;

thence North  $45^{\circ}46'32''$  West, a distance of 24.44 feet to the POINT OF BEGINNING.

Containing 12,657 square feet, more or less.

### Tract 3

COMMENCING at the most northerly corner of Parcel 2, Partition Plat No. 2010-046;

thence along the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue, South  $01^{\circ}35'01''$  West, a distance of 68.95 feet to the POINT OF BEGINNING;

thence leaving said westerly Right-of-Way line, North  $46^{\circ}43'10''$  East, a distance of 19.16 feet;

thence along a 646.00 foot radius tangential curve to the left, arc length of 38.44 feet, central angle of  $03^{\circ}24'32''$ , chord distance of 38.43 feet, and chord bearing of North  $45^{\circ}00'54''$  East to a point on the easterly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South  $01^{\circ}35'01''$  West, a distance of 388.84 feet;

thence leaving said easterly Right-of-Way line, along a 788.00 foot radius non-tangential curve, concave westerly, with a radius point bearing South  $77^{\circ}24'40''$  West, arc length of 124.82 feet, central angle of  $09^{\circ}04'33''$ , chord distance of 124.69 feet, and chord bearing of North  $17^{\circ}07'37''$  West to a point on the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said westerly Right-of-Way line, North  $01^{\circ}35'01''$  East, a distance of 229.31 feet to the POINT OF BEGINNING.

Containing 12,139 square feet, more or less.

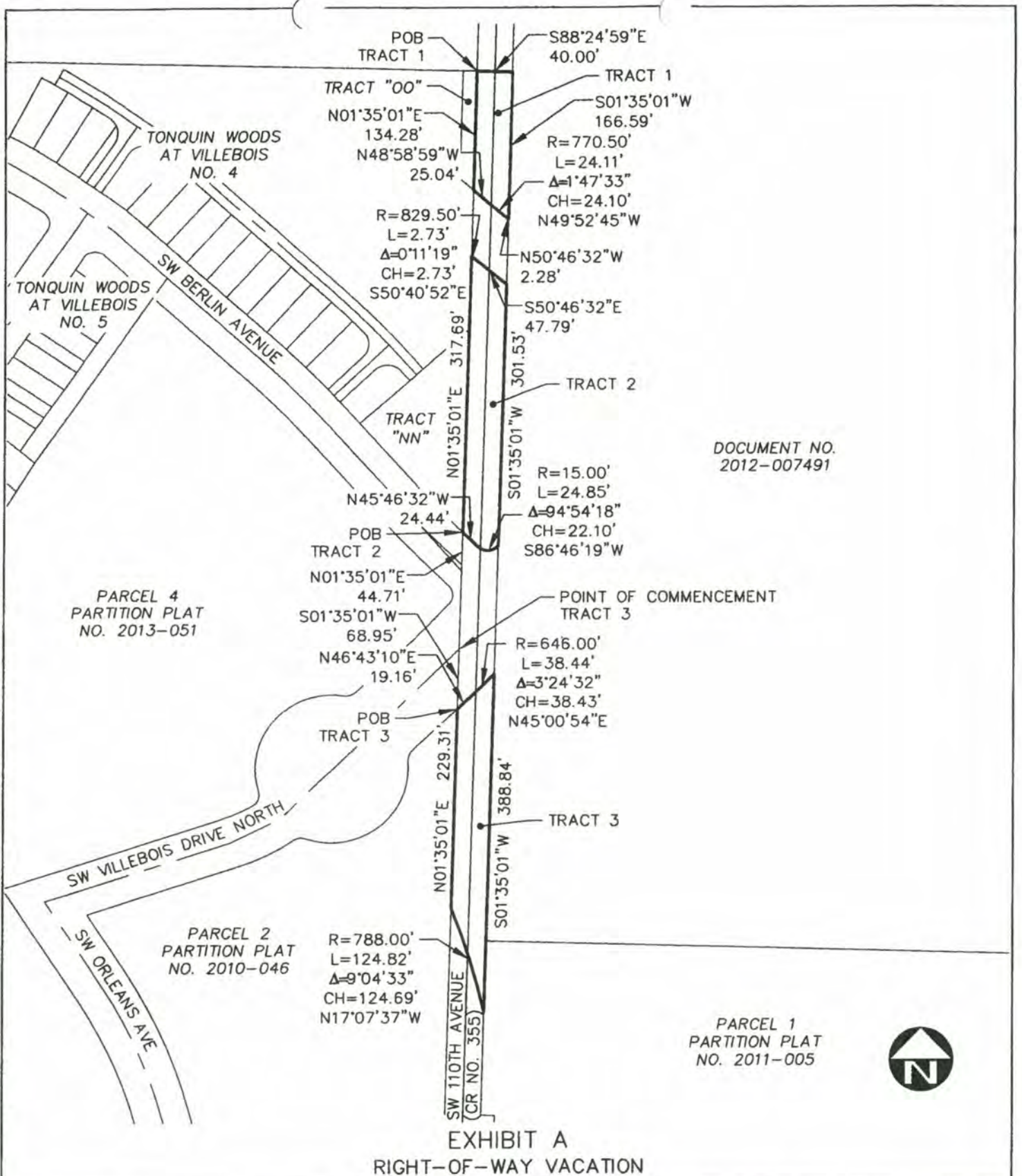
Basis of bearings being plat of "Tonquin Woods at Villebois No. 4", Clackamas County Survey Records.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 9, 2002  
TRAVIS C. JANSEN  
57751

RENEWS: 6/30/2015





DRAWN BY: CLL DATE: 12/24/13  
 REVIEWED BY: TCJ DATE: 12/24/13  
 PROJECT NO.: 395-025  
 SCALE: 1"=150'  
 PAGE 3 OF 3

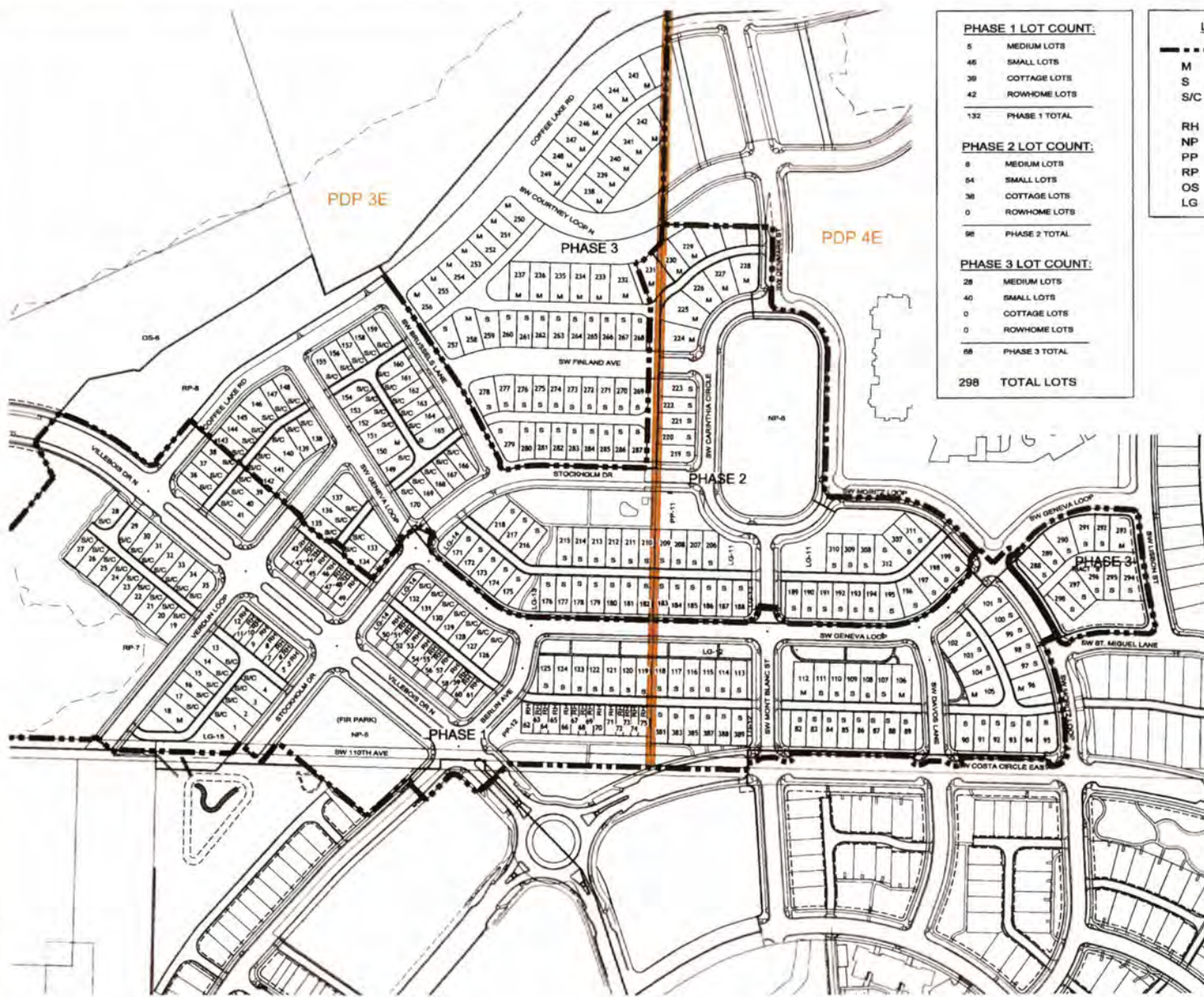


12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485  
 Exhibit C



## **EXHIBIT D**

### **Copy of PDP 3E and PDP 4E Phasing Plan**



**PHASE 1 LOT COUNT:**

5	MEDIUM LOTS
46	SMALL LOTS
30	COTTAGE LOTS
42	ROWHOME LOTS
132	PHASE 1 TOTAL

**PHASE 2 LOT COUNT:**

8	MEDIUM LOTS
64	SMALL LOTS
38	COTTAGE LOTS
0	ROWHOME LOTS
98	PHASE 2 TOTAL

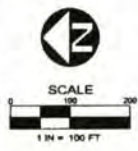
**PHASE 3 LOT COUNT:**

28	MEDIUM LOTS
40	SMALL LOTS
0	COTTAGE LOTS
0	ROWHOME LOTS
68	PHASE 3 TOTAL

**298 TOTAL LOTS**

**LEGEND:**

---	PHASE BOUNDARY
M	MEDIUM LOTS
S	SMALL LOTS
S/C	COTTAGE LOTS (REPLACEMENT FOR SMALL ATTACHED LOTS)
RH	ROWHOME LOTS
NP	NEIGHBORHOOD PARK
PP	POCKET PARK
RP	REGIONAL PARK
OS	OPEN SPACE
LG	LINEAR GREEN



**POLYGON NW COMPANY**  
 (T) (360) 695-7700 (F) 360-693-4444  
 WWW.POLYGONHOMES.COM

DATE: 9/12/2013

**REVISIONS**

NO.	DATE	DESCRIPTION
-----	------	-------------

**Tonquin  
Meadows  
& Tonquin  
Meadows  
No. 2**

Phasing  
Plan



(T) 503-941-9404 (F) 503-941-9405  
 PROJECT NO.: 385-025  
 TYPE: PLANNING  
 REVIEWED BY: JJK

**A**



**EXHIBIT C1  
PLANNING DIVISION  
STAFF REPORT**

**SW 110<sup>th</sup> AVENUE STREET VACATION  
VILLEBOIS SAP EAST PDP 3 AND 4**

**DEVELOPMENT REVIEW BOARD PANEL '\_\_\_',  
QUASI JUDICIAL HEARING**

---

**Public Hearing Date:**

**Date of Report:**

**Application Numbers:**

**Request A: DB14-0001 Vacation OF A Portion of SW  
110<sup>th</sup> Avenue Right-of-Way**

**Property**

**Owners/Applicants:**

**PD = Planning Division conditions**

**BD = Building Division Conditions**

**PF = Engineering Conditions.**

**NR = Natural Resources Conditions**

**TR = SMART/Transit Conditions**

**FD = Tualatin Valley Fire and Rescue Conditions**

**CONDITIONS OF APPROVAL**

**PFA 1. Concurrently with the 110<sup>th</sup> Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110<sup>th</sup> Avenue prior to its demolition and reconfiguration of the street network.**

**PFA 2. For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum 15-foot wide easements centered on the utility. For private easements they shall be of sufficient width as needed by the private utility and as approved by the City.**

**PFA 3. The future demolition of 110<sup>th</sup> Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.**



City of Wilsonville  
Exhibit C1 DB14-0001

Exhibit C

Public Works Plan Review Comments

Plans for Review:  
Issue Date:

110<sup>th</sup> Ave ROW Vacation  
January 16/17, 2014

Return All Comments To:  
Due Date:

Dan Pauly  
January 30, 2014

Name	Page No.	Comments	Engineering's Response
Randy Watson			
Matt Baker		No Comments	
Steve Munsterman		No Comments	
Arnie Gray		No Comments	
Ralph Thorp		Still need to provide water to City irrigation meter at 110 <sup>th</sup> and Tooze. Maybe install new meter at the roundabout?	
Jason Labrie / Steve Gering		No Comments	
Mark Folz / Paul Havens		No Comments	

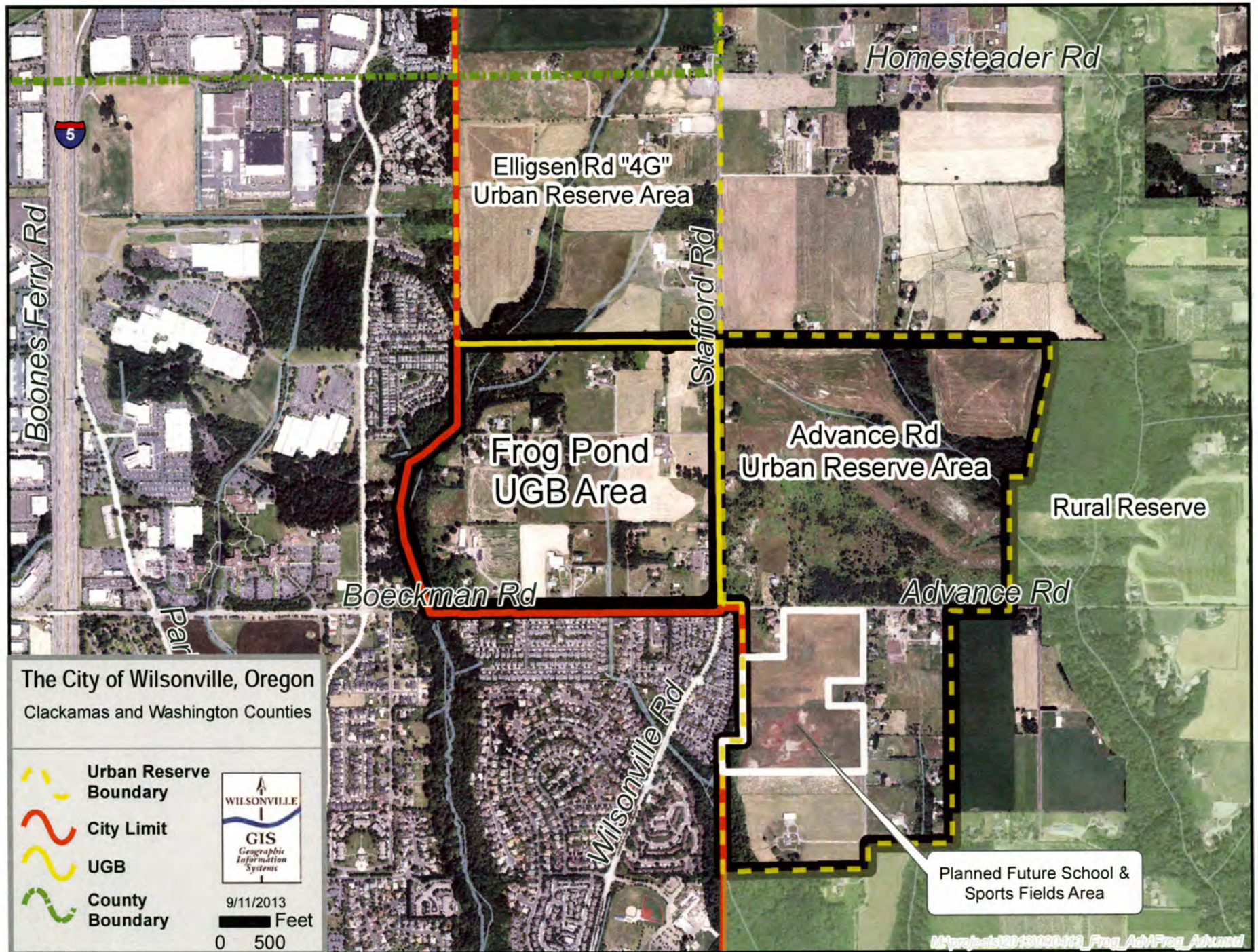
Page 43 of 43



City of Wilsonville  
Exhibit C2 DB14-0001

Exhibit C







## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b>  March 3, 2014	<b>Subject:</b> Order Establishing Scope of Review of Appeal of DRB Panel A Decision Regarding the Human Bean Coffee Kiosk  <b>Staff Member:</b> Daniel Pauly AICP, Associate Planner <b>Department:</b> Planning Division
<b>Action Required</b> <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Development Review Board Recommendation</b> <input type="checkbox"/> Approval <input checked="" type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comment:</b> Following their review at the January 13 <sup>th</sup> and February 10 <sup>th</sup> meetings Development Review Board Panel A rejected proposed Resolution No. 268 to approve with conditions the Human Bean Coffee Kiosk and denied the application. On January 21 <sup>st</sup> , the applicant filed an appeal of the DRB's decision.
<b>Staff Recommendation:</b> The City Council's scope of review be limited to the issues related to the reasons DRB members stated for denial. These issues are: <ul style="list-style-type: none"> <li>On-site traffic congestion,</li> <li>Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles.</li> </ul>	
<b>Recommended Language for Motion:</b> Having considered the factors in WC 4.022(.07) A, I move the City Council order that the appeal hearing of the denial Human Bean application by Development Review Board Panel A at its February 10, 2014 hearing, be limited to additional testimony and evidence on the following issues and related development code provisions: <ul style="list-style-type: none"> <li>On-site traffic congestion,</li> <li>Adequacy, efficiency, and safety of on-site pedestrian and vehicle circulation inclusive of delivery vehicles and other larger format vehicles.</li> <li>Section 4.154, Subsections 4.155 (.03) A., 4.400 (.02) A., and 4.421 (.01) C.</li> </ul>	
<b>PROJECT / ISSUE RELATES TO:</b> Development Code	
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)
<input checked="" type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:** At their February 10, 2014 meeting on this matter, Development Review Board Panel A voted 4-1 to deny the applications for the Human Bean Coffee Kiosk. On January 21, 2014, the applicant filed an appeal of the DRB's decision. The City's Development



Code (Subsection 4.022 (.05) B.) provides the City Council as the reviewing body shall order the scope of review on appeal to be one of the following:

- Restricted to the record, meaning only evidence and testimony entered into the DRB record shall be considered, but the right of argument as to how the evidence in the record meets or does not meet the applicable standards is granted.
- Limit the scope to issues the Council determines necessary for a proper resolution of the matter. This allows any party to testify and submit new evidence related to the stated issues, but considers all other matters related to the applications on the record. For example, a new concern about architecture can't be raised on appeal if architecture wasn't an issue identified by the Council. Both parties had new evidence on the seminal issue they wanted to present to the DRB, but the record had been closed. This option takes away any claim they parties were not fully heard. This option also gives staff the ability to more thoroughly present the facts surrounding the reasons DRB denied the applications and gives the applicant and the opponent the opportunity to present further approaches to consider that might resolve the problems identified by the DRB.
- A de novo hearing, meaning new evidence and testimony on any topic related to the applications can be submitted during the City Council review. This could lengthen the hearing and not make efficient use of the Council's hearing time.

**EXECUTIVE SUMMARY:** On January 21, 2014 the applicant filed an appeal of the recent DRB decision to deny the applications allowing for building a coffee kiosk on the same property as the Carl's Jr. Restaurant in North Wilsonville. The appeal will first be heard during the Council's March 17, 2014 meeting. A final decision must be rendered by the City no later than the Council's April 7, 2014 meeting in order to not violate the state's 120-day rule for land use reviews. After discussion between planning and legal staff, staff recommends the council keep the record open on a limited basis to allow additional evidence, staff discussion, and analysis of the issues surrounding the reasons the DRB denied the applications. All other issues and topics will be on the record. This approach allows for more thorough discussion of the issues surrounding the denial and allows the applicant to address concerns raised by the DRB, and opponents of the application to comment on any new ideas proposed to address concerns.

**EXPECTED RESULTS:** Identification of the level of new evidence and testimony the Council will consider for the Human Bean coffee kiosk applications on appeal

**TIMELINE:** Making the decision on the type of hearing to hold will allow all parties, including staff, the applicant, and opponents of the application to understand and prepare for the anticipated City Council hearing later in the month.

**CURRENT YEAR BUDGET IMPACTS:** None anticipated

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: JEO, Date: 2/21/14

No financial impact.



**LEGAL REVIEW / COMMENT:**

Reviewed by: MEK, Date: 2/14/ 2014

The Council has the discretion to set the scope of review on appeal. The factors that the Council shall consider in allowing additional evidence are set forth in WC 4.022 (.07) A. Allowing both parties to address this issue eliminates any claim of prejudice (factor 1); will allow both the parties to know they can bring available evidence as this was not the case with the DRB record being closed (factor 2); this will eliminate any claim of surprise (factor 4), albeit this was not a claim in front of the DRB; and to the extent the proposed testimony and evidence of each party was offered to the DRB (but not admitted) the proposed testimony and evidence appears to have some competency and materiality to the determining issue (factor 4). There may such other factors as the Council may determine apply (factor 5).

**COMMUNITY INVOLVEMENT PROCESS:** The standards public notice procedures for the DRB have been followed. The DRB has allowed interested parties to testify during their hearing process.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** Making a motion to determine the extent of new evidence and testimony that will be allowed for the Human Bean applications on appeal allows for clear expectations for all the parties involved. The recommendation of keeping the record open only on the issues identified by the DRB in the denial allows for thorough consideration of the issues in relation to the best interest of the community.

**ALTERNATIVES:** As alternatives to Planning and Legal staff's recommendation to allow new evidence and testimony only on those issues identified for the DRB as reasons for denial the Council could:

Not allow any new evidence or testimony and review only the DRB record

Hold a de novo hearing which will allow evidence and testimony on any topic related to the Human Bean.

**CITY MANAGER COMMENT:****ATTACHMENTS:**

DRB Notice of Decision, Resolution 270 Denying the Application, and Proposed Resolution Non. 268 rejected by the DRB.





29799 SW Town Center Loop E  
Wilsonville, Oregon 97070  
(503) 682-1011  
(503) 682-1015 Fax Administration  
(503) 682-7025 Fax Community Development

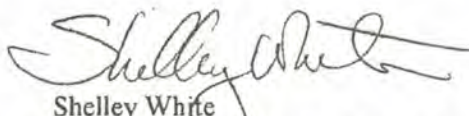
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer  
Wilsonville Devco LLC  
P.O. Box 6437  
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.



Shelley White  
Planning Administrative Assistant

CC: Ben Altman – SFA Design Group  
Craig Anderson – CB Anderson Architects  
Tom Berg  
Garry LaPoint  
Jason LaPoint  
Steve Pfeiffer – Perkins Coie

CC via e-mail: Wallace W. Lien  
George Gregory

February 13, 2014

**DEVELOPMENT REVIEW BOARD PANEL A**

**NOTICE OF DECISION**

**Project Name:** Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

**Case File Nos.:** DB13-0046 – Stage II Final Plan revision  
DB13-0047 – Site Design Review  
DB13-0048 – Master Sign Plan revision and Sign Waiver

**Applicant/Owner:** Josh Veentjer – Wilsonville Devco LLC

**Authorized  
Representatives:** Ben Altman – SFA Design Group  
Craig Anderson – CB Anderson Architects

**Property Description:** Tax Lots 302, Section 2DB; T3S R1W; Washington County;  
Wilsonville, Oregon

**Location:** Corner of 95<sup>th</sup> Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02)*.

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13<sup>th</sup> day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.



**DEVELOPMENT REVIEW BOARD  
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95<sup>TH</sup> AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

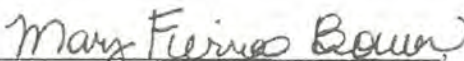
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and


WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10<sup>th</sup> day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).

  
Mary Fierros Bower Chair, Panel A  
Wilsonville Development Review Board

Attest:

  
Shelley White, Planning Administrative Assistant



**DEVELOPMENT REVIEW BOARD  
RESOLUTION NO. 268**

**A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95<sup>TH</sup> AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.**

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.068 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13<sup>th</sup> day of January, 2014 and filed with the Planning Administrative Assistant on \_\_\_\_\_. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.02)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

\_\_\_\_\_  
Mary Fierros Bower Chair, Panel A  
Wilsonville Development Review Board

Attest:

\_\_\_\_\_  
Shelley White, Planning Administrative Assistant





1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

PHONE: 503.727.2000

FAX: 503.727.2222

www.perkinscoie.com

Steven L. Pfeiffer

PHONE: (503) 727-2261

FAX: (503) 346-2261

EMAIL: SPfeiffer@perkinscoie.com

February 21, 2014

**BY HAND DELIVERY**

Sandra C. King, MMC  
City Recorder  
City of Wilsonville  
29799 SW Town Center Loop E  
Wilsonville, OR 97070

*Recd 2/21/14  
\$ 800.00 ACK  
paid. check #10049*

**Re: City Files DB 13-0046, BD 13-0047, and DB 13-0048, Wilsonville Devco, LLC**

Dear Ms. King:

This office represents Wilsonville Devco, LLC the Applicant in the above-referenced matter. Enclosed please find a Notice of Intent to Appeal the above-referenced matter to City Council, as well as a check in the amount of \$800.00 as the appeal fee. Please process this Notice of Intent to Appeal and advise me of the scheduled hearing date. Please also include me on the notice list for all correspondence related to this appeal.

Very truly yours,

  
Steven L. Pfeiffer

SLP:GHS

Enclosures

Cc: Client (w/encls.) (via email)  
Wallace Lein (w/encls.) (via email)

112634-0001/LEGAL29527672.1

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DALLAS • DENVER • LOS ANGELES • MADISON • NEW YORK  
PALO ALTO • PHOENIX • PORTLAND • SAN DIEGO • SAN FRANCISCO • SEATTLE • SHANGHAI • TAIPEI • WASHINGTON, D.C.

Perkins Coie LLP

# CITY OF WILSONVILLE

29799 SW Town Center Loop East

Wilsonville, OR 97070

Phone: 503.682.4960

Fax: 503.682.7025

Web: [www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)

Pre-Application meeting date:

## TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

## Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

### Applicant:

Josh Veentjer

Address: 4188 SW Greenleaf Dr. Portland, OR 97221

Phone: 503.201.1309

Fax:

E-mail: [josh@pdvco.com](mailto:josh@pdvco.com)

### Authorized Representative:

Stephen L. Pfeiffer

Address: 1120 NW Couch Street, Tenth Flr., Portland, OR 97209

Phone: 503.727.2261

Fax:

E-mail: [spfeiffer@perkinscoie.com](mailto:spfeiffer@perkinscoie.com)

### Property Owner:

Josh Veentjer, Wilsonville Devco, LLC

Address: 4188 SW Greenleaf Dr. Portland, OR 97221

Phone: 503.201.1309

Fax:

E-mail: [josh@pdvco.com](mailto:josh@pdvco.com)

### Property Owner's Signature:

Printed Name: Josh Veentjer Date: 2/20/14

### Applicant's Signature (if different from Property Owner):

Printed Name: Date:

### Site Location and Description:

Project Address if Available: 25250 SW 95th Avenue Suite/Unit

Project Location: Northern portion of Boones Ferry Pointe, adjacent to Carl's Jr. and Chevron Station.

Tax Map #(s): 2DB Tax Lot #(s): 302 County: ☒ Washington ☐ Clackamas

### Request:

Appeal of DRB Decision in DB 13-0047, and DB 13-0048

### Project Type: Class I ☐ Class II ☐ Class III ☐

☐ Residential

☐ Commercial

☐ Industrial

☐ Other (describe below)

### Application Type:

☐ Annexation

☐ Final Plat

☐ Plan Amendment

☐ Request for Special Meeting

☐ SROZ/SRIR Review

☐ Type C Tree Removal Plan

☐ Villebois SAP

☐ Zone Map Amendment

☒ Appeal

☐ Major Partition

☐ Planned Development

☐ Request for Time Extension

☐ Staff Interpretation

☐ Tree Removal Permit (B or C)

☐ Villebois PDP

☐ Other

☐ Comp Plan Map Amend

☐ Minor Partition

☐ Preliminary Plat

☐ Signs

☐ Stage I Master Plan

☐ Temporary Use

☐ Villebois PDP

☐ Conditional Use

☐ Parks Plan Review

☐ Request to Modify Conditions

☐ Site Design Review

☐ Stage II Final Plan

☐ Variance

☐ Waiver



**BEFORE THE CITY COUNCIL  
FOR THE CITY OF WILSONVILLE, OREGON**

<b>In the Matter of an Appeal by the</b>	)	
<b>Applicant, Wilsonville Devco, LLC of a</b>	)	<b>WRITTEN NOTICE OF INTENT TO</b>
<b>Decision by the Development Review</b>	)	<b>APPEAL</b>
<b>Board, dated February 10, 2014, Denying</b>	)	
<b>the Application for a Stage II Final Plan</b>	)	
<b>Revision, Site Design Review, and Master</b>	)	
<b>Sign Plan Revision (City File Nos. DB13-</b>	)	
<b>0046, DB13-0047, and DB 13-0048)</b>	)	

**1. Introduction.**

Wilsonville Devco, LLC ("Appellant"), the Applicant in the above-referenced application, submits this appeal of the February 10, 2014 decision by the Development Review Board ("DRB") of the City of Wilsonville ("City"), which denied the request for a Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision (City File Nos. DB13-0046, DB13-0047, and DB 13-0048) ("Proposed Development"). Appellant applied for these land use permits on November 12, 2013 and the DRB considered them at public hearings held on January 13, 2014 and February 10, 2014. Despite City staff's recommendation for approval in which it stated the Proposed Development met all applicable criteria as proposed and with recommended conditions of approval (**Exhibit 1**), as well as additional memoranda from staff indicating that the proposed circulation on the site was sufficient (**Exhibit 2**), the DRB denied the application. Specifically, the DRP denied the application based on concerns "about on-site traffic circulation, congestion and safety in general and referring specifically to Wilsonville Code Section 4.400.02 and 4.421C." (**Exhibit 3**).

In denying the application, the DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C. Moreover, its determination that these provisions were not satisfied is not supported by, and is contrary to, the substantial evidence in the record. For the reasons explained below, the City Council should reverse the DRC's decision and find that the Proposed Development satisfies site circulation requirements specified in WDC 4.400.02 and 4.432C. It should therefore approve Appellant's application in its entirety.

This appeal is timely filed prior to the February 27, 2014 deadline.

**2. Reason for Appeal.**

Wilsonville Devco, LLC is the owner of the subject property and the Applicant in the above-referenced application. As demonstrated by substantial evidence in the record and contrary to the DRB findings, Appellant has demonstrated that the Proposed Development meets all applicable criteria. With respect to the specific issue of internal vehicle circulation, the Appellant has demonstrated adequate and safe turning movements, vehicle stacking, and truck



access, as discussed in the Planning Division Memorandum of February 10, 2014. **Exhibit 2.**

### **3. Procedural History.**

Appellant applied for these land use permits on November 12, 2013. The application was deemed incomplete on November 20, 2013. Appellant submitted additional materials on December 4 and December 7, 2013. The application was deemed complete on December 19, 2013. An initial DRB hearing was conducted on January 13, 2014. The record of this hearing was held open until January 27, 2014. A second DRB hearing and final consideration of the Proposed Development was held on February 10, 2014. Notice of the DRB's decision was mailed on February 13, 2014. Under the 120-day rule, the City must issue a final decision by April 8, 2014.

### **4. Compliance with Appeal Requirements.**

Wilsonville's procedures for an appeal of a DRB decision are set forth in WDC 4.022(.02). This appeal is consistent with that section, as discussed below:

#### **Section 4.022 Appeal and Call-up Procedures.**

**(.02) Board Action.** A decision of the Development Review Board may be appealed to the Council by any affected party who participated in the hearing before the Board by filing an appeal within fourteen (14) calendar days of the posting of the notice of decision, or by the call-up procedures listed below. The notice of appeal shall indicate the decision that is being appealed.

RESPONSE: The City mailed its notice of the DRB's decision on February 13, 2014. Exhibit 3. The deadline for appeal is February 27, 2014. This Notice of Intent to Appeal, dated February 21, 2014, is therefore timely. This Notice of Intent to Appeal also indicates the decisions being appealed, which are stated in **Exhibit 3**. Therefore, this Notice of Intent to Appeal meets the requirements of WDC 4.022(.02).

### **5. Conclusion.**

For the reasons stated herein, which will be supplemented prior to the hearing on this appeal, the City Council should reverse the February 10, 2014 decision of the DRB and approve Appellant's application in its entirety.



Steven L. Pfeiffer, Appellant's Representative  
Perkins Coie LLP  
1120 NW Couch St., 10<sup>th</sup> Floor  
Portland, OR 97209-4128  
Phone: (503)-727-2261

Dated: \_\_\_\_\_

2/21/14



## **EXHIBITS**

- Exhibit 1: DRB Staff Report
- Exhibit 2: Staff Memorandum (February 10, 2014)
- Exhibit 3: Notice of DRB Decision

DEVELOPMENT REVIEW BOARD MEETING

MONDAY, JANUARY 13, 2014

6:30 PM

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**VIII. Public Hearing:**

**B. Resolution No. 268. Boones Ferry Pointe – The Human Bean Drive-up Coffee Kiosk: SFA Design Group and CB Anderson Architects – Representatives for Wilsonville Devco LLC – Applicant/Owner.** The applicant is requesting approval of a Stage II Final Plan revision, Site Design Review and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk at the corner of 95<sup>th</sup> Avenue and Boones Ferry Road. The subject site is located on Tax Lot 302 of Section 2DB, T3S, R1W, Washington County, Oregon. Staff: Daniel Pauly

Case Files: DB13-0046 – Stage II Final Plan Revision  
DB13-0047 – Site Design Review  
DB13-0048 – Master Sign Plan Revision  
and Sign Waiver



**DEVELOPMENT REVIEW BOARD  
RESOLUTION NO. 268**

**A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95<sup>TH</sup> AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS – REPRESENTATIVES FOR WILSONVILLE DEVCO LLC – APPLICANT/OWNER.**

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13<sup>th</sup> day of January, 2014 and filed with the Planning Administrative Assistant on \_\_\_\_\_. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.09)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

\_\_\_\_\_  
Mary Fierros Bower Chair, Panel A  
Wilsonville Development Review Board

Attest:

\_\_\_\_\_  
Shelley White, Planning Administrative Assistant

**Exhibit A1**  
**STAFF REPORT**  
**WILSONVILLE PLANNING DIVISION**

*Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk*

**DEVELOPMENT REVIEW BOARD PANEL 'A'**  
**QUASI-JUDICIAL PUBLIC HEARING**  
**STAFF REPORT**

---

<b>HEARING DATE</b>	January 13, 2014
<b>DATE OF REPORT:</b>	January 6, 2014

---

**APPLICATION NOS.:** DB13-0046 Stage II Final Plan Revision  
DB13-0047 Site Design Review  
DB13-0048 Master Sign Plan Revision and Sign Waiver

**REQUEST/SUMMARY:** The Development Review Board is being asked to review a revised Stage II Final Plan, Site Design Review, and revised Master Sign Plan for the development of a new 450 square foot drive-thru coffee shop to replace an approved but un-built 3,150 square foot multi-tenant commercial building at the corner of 95<sup>th</sup> Avenue and Boones Ferry Road in North Wilsonville.

**LOCATION:** The proposed coffee shop location is on the southeast corner of the 95th Avenue/ Boones Ferry Road intersection near Elligsen Road/I-5 Interchange. The property is specifically known as Tax Lot 0302, Section 2DB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Washington County, Oregon.

**OWNER/APPLICANT:** Josh Veentjer  
Wilsonville Devco LLC

**APPLICANT'S REPS.:** Ben Altman  
SFA Design Group

Craig Anderson  
CB Anderson Architects

**COMPREHENSIVE PLAN MAP DESIGNATION:** Commercial

**ZONE MAP CLASSIFICATION:** PDC (Planned Development Commercial)

**STAFF REVIEWERS:** Daniel Pauly AICP, Associate Planner  
Steve Adams PE, Development Engineering Manager  
Don Walters, Building Plans Examiner

**STAFF RECOMMENDATION:** Approve with conditions the requested revised Stage II Final Plan, Site Design Review request, and revised Master Sign Plan.

---

Development Review Board Panel „A’ Staff Report January 6, 2014  
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk  
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 1 of 50



## APPLICABLE REVIEW CRITERIA

Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Section 4.031	Authority of the Development Review Board
Subsection 4.035 (.04)	Site Development Permit Application
Subsection 4.035 (.05)	Complete Submittal Requirement
Section 4.110	Zones
Section 4.116	Standards Applying to Commercial Development in All Zones
Section 4.118	Standards Applying to Planned Development Zones
Section 4.131	Planned Development Commercial Zone (PDC)
Section 4.140	Planned Development Regulations
Section 4.154	On-site Pedestrian Access and Circulation
Section 4.155	Parking, Loading, and Bicycle Parking
Sections 4.156.01 through 4.156.11	Sign Regulations
Section 4.167	Access, Ingress, and Egress
Section 4.171	Protection of Natural Features and Other Resources
Section 4.175	Public Safety and Crime Prevention
Section 4.176	Landscaping, Screening, and Buffering
Section 4.177	Street Improvement Standards
Section 4.179	Mixed Solid Waste and Recyclables Storage
Sections 4.199.20 through 4.199.60	Outdoor Lighting
Sections 4.300 through 4.320	Underground Utilities
Sections 4.400 through 4.450 as applicable	Site Design Review

### Vicinity Map



### BACKGROUND/SUMMARY:

#### Approved Stage I Master Plan/Site History

The subject property is part of the Edwards Business Center Industrial Master Plan. This master plan envisioned a variety of industrial and commercial uses. The Master Plan designated the subject site as commercial, but did not specify the type of commercial use. Previously the City received an application for an office building on the site, which was never built. In March 2013 the Development Review Board approved an application to construct a fast-food restaurant and a multi-tenant commercial building consistent with the designation of the property in the Master Plan. The restaurant building has been built, but the property owner determined they were unable to find appropriate tenants and finance the commercial building. The applicant is now requesting to replace the multi-tenant commercial building portion of the development with a drive-thru coffee kiosk which remains consistent with the Stage I Master Plan commercial designation.

#### Stage II Final Plan (DB13-0046)

The Stage II Final Plan looks at the function and overall aesthetics of the proposed development, including traffic, parking, and circulation.

The proposed revised master plan includes a 450 square foot drive-thru coffee kiosk, and associated site improvements including parking, circulation, and landscaping. The coffee kiosk development replaces a multi-tenant commercial building approved by the DRB in March 2013



at the same time the adjacent Carl's Jr. restaurant was approved. The development site sits just north of the recently completed Carl's Jr. restaurant at the southeast corner of SW 95<sup>th</sup> Avenue and SW Boones Ferry Road. The kiosk building has a flat roof with a parapet to screen view of mechanical equipment. The north end of the building has a tower featuring the sign bands. A drive through lane wraps around the east, north, and west side of the kiosk and the adjoining patio and parking area. Parking is to the south and southeast.

Vehicle access to the coffee kiosk is via an existing shared driveway with Holiday Inn, Chevron, and Carl's Jr.

The Modified Stage II Final Plan for Boones Ferry Point, which will include Carl's Jr. and the proposed coffee kiosk, proposes approximately 15569 square feet of landscaping, 37 parking spaces (35 required), maneuvering and circulations areas, and mixed solid waste and recyclables storage. The total gross area of the site covered by the Stage II Master Plan is 55,605 square feet or 1.28 acres.

#### **Site Design Review (DB13-0047)**

##### ***Architectural Design***

In the application for the original Boones Ferry Point (DB12-0074 et. seq.) the applicant explained how the design goal was to identify with the general environment of commercial development at Argyle Square and along Wilsonville Road while also adding a unique personality to the development and proper identity to the planned tenants. Smaller scale wood-frame structures using traditional exterior materials intended to reinforced their location in Wilsonville's small town setting. The approved buildings featured brick, horizontal lap siding, and board and batten materials. The proposed coffee kiosk follows this same architectural theme previously proposed and approved. The building features brick around the base, with a mix of lap siding and horizontal siding on the main body of the building. The tower design has similar shape as the Carl's Jr. building towers, but uses different material and colors. The Carl's Jr. building and the proposed coffee kiosk incorporate similar architectural elements, but have enough differences to be unique and complementary.

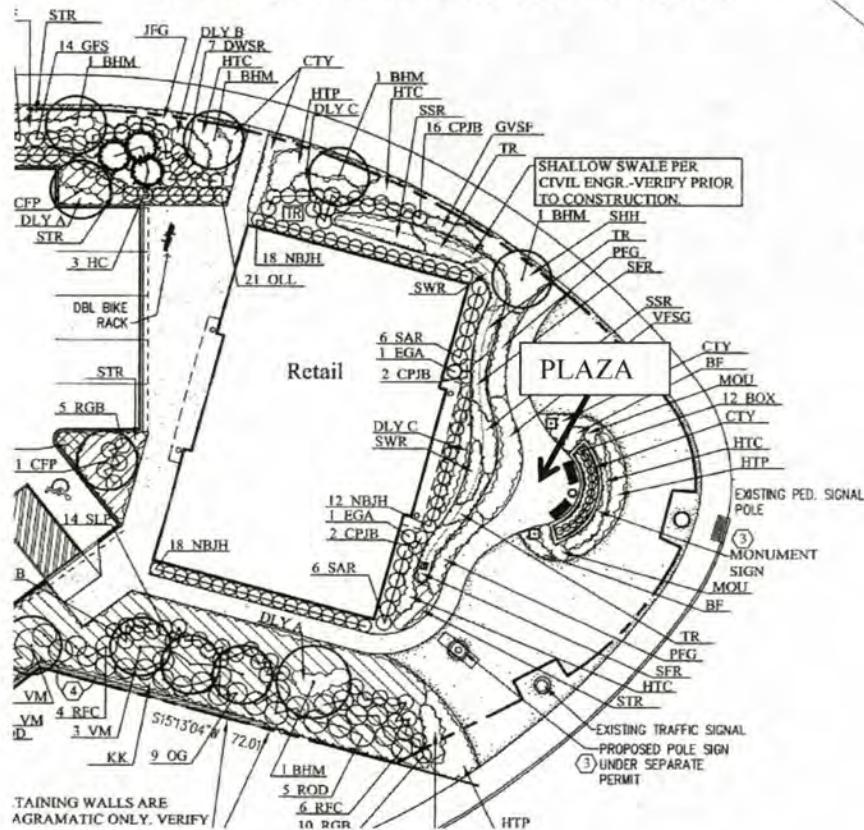
**Proposed Drive-thru Coffee Kiosk Rendering**



## Landscape and Hardscape Design

In the design of Boones Ferry Pointe previously approved by the DRB a planter and plaza are featured at the north of the site to acknowledge the gateway at a prominent intersection on the northern edge of the City. The remainder of the landscaping is typical of parking lots and commercial areas in Wilsonville. In the proposed revised plan the planter and gateway sign with flag remain, but the plaza has been replaced with a patio area adjacent to the coffee kiosk. The remainder of the area around the coffee kiosk accommodates the drive-thru lane and otherwise remains typical of parking lots and commercial areas in Wilsonville.

**Landscape Plan Previously Approved by DRB**





[illegible]

### *Building Signs*

### Proposed Building Signs



Exhibit A1

6 of 92

## **DISCUSSION TOPICS:**

### *Bicycle Parking*

While the required number of bicycle parking spaces is provided, a couple requirements for bicycle parking are not met. The requirements not met include the spacing between bike parking and the kiosk building and the distance of the bike parking from the pedestrian service window. Condition of Approval PDA 2 requires the bicycle parking to be relocated within the plaza area or otherwise modified to meet these requirements.

### *Existing Hardscape and Landscape Improvements*

Most of the hardscape and landscape for the proposed development has already been installed. This was done by the developer at their own risk. While, staff recommends approval, with modifications, of the hardscape and landscape as installed, the Development Review Board has full authority to require changes to the hardscape and landscape as if none had yet been installed.

### *Tables and Other Furnishings for Patio Area*

The applicant has not provided information on tables or other furnishings for the patio area adjacent to the coffee kiosk. While none are currently proposed, it is understood furnishings will be placed in this area. Condition of Approval PDB 9 ensures the design of these furnishings will be durable and match or complement to the neighboring building thus helping to meet the site design review standards.

### *Restrictive Covenant Legal Dispute*

As described in Exhibit D1 a legal dispute is ongoing regarding whether a restrictive covenant on the property prevents the operation of the proposed coffee kiosk. This is a private matter to be resolved between the parties. Staff does not see a reason to delay City approval with conditions of the proposed development. See letter regarding this matter from Barbara Jacobson, Assistant City Attorney, Exhibit C3.



## CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant's analysis of compliance with the applicable criteria. The Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board approve the proposed application (DB13-0046, DB13-0047, DB13-0048) with the following conditions:

### REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION

#### Planning Division Conditions:

- PDA 1.** The approved final plan schedule shall control the issuance of all building permits and shall restrict the nature, location and design of all uses. Minor changes to the approved final development plan may be approved by the Planning Director through administrative review pursuant to Section 4.030 if such changes are consistent with the purposes and general character of the plan. All other modifications shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.
- PDA 2.** The applicant shall modify or relocate the bicycle parking spaces to meet the following standards identified in Subsection 4.155 (.04) B. while continuing to meet all other applicable standards:
- An aisle at least 5 feet wide shall be maintained behind all required bicycle parking to allow room for bicycle maneuvering.
  - Each space be located within 30 feet of the pedestrian service window.

### REQUEST B: DB13-0047 SITE DESIGN REVIEW

#### Planning Division Conditions:

- PDB 1.** Construction, site development, and landscaping shall be carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. Minor revisions may be approved by the Planning Director through administrative review pursuant to Section 4.030. See Findings B3.
- PDB 2.** All landscaping required and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City will be returned to the applicant. See Finding B9.



<b>PDB 3.</b>	The approved landscape plan is binding upon the applicant/owner. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, pursuant to the applicable sections of Wilsonville's Development Code. See Finding B10.
<b>PDB 4.</b>	All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered as allowed by Wilsonville's Development Code. See Findings B11 and B12.
<b>PDB 5.</b>	<p>The following requirements for planting of shrubs and ground cover shall be met:</p> <ul style="list-style-type: none"> <li>• Non-horticultural plastic sheeting or other impermeable surface shall not be placed under landscaping mulch.</li> <li>• Native topsoil shall be preserved and reused to the extent feasible.</li> <li>• Surface mulch or bark dust shall be fully raked into soil of appropriate depth, sufficient to control erosion, and shall be confined to areas around plantings.</li> <li>• All shrubs shall be well branched and typical of their type as described in current AAN Standards and shall be equal to or better than 2-gallon containers and 10" to 12" spread.</li> <li>• Shrubs shall reach their designed size for screening within three (3) years of planting.</li> <li>• Ground cover shall be equal to or better than the following depending on the type of plant materials used: gallon containers spaced at 4 feet on center minimum, 4" pot spaced 2 feet on center minimum, 2-1/4" pots spaced at 18 inch on center minimum.</li> <li>• No bare root planting shall be permitted.</li> <li>• Ground cover shall be sufficient to cover at least 80% of the bare soil in required landscape areas within three (3) years of planting.</li> <li>• Appropriate plant materials shall be installed beneath the canopies of trees and large shrubs to avoid the appearance of bare ground in those locations.</li> <li>• Compost-amended topsoil shall be integrated in all areas to be landscaped, including lawns.</li> </ul> <p>See Finding B22.</p>
<b>PDB 6.</b>	Plant materials shall be installed to current industry standards and be properly staked to ensure survival. Plants that die shall be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City. See Finding B27.
<b>PDB 7.</b>	Outdoor lighting associated with the coffee kiosk use shall be dimmed at 10:00 p.m. by an automatic system. See Finding B38.
<b>PDB 8.</b>	All non-exempt luminaires shall be limited to down lighting. Non-exempt luminaires, except luminaire DD, shall be mounted and aimed consistent with their fully shielded classification. See Finding B35 and B37.
<b>PDB 9.</b>	Furnishings for the patio area shall be of durable materials that can withstand multiple years of outdoor exposure and remain in a like-new condition. Furnishings for the patio area shall be colors matching or complementary to the coffee kiosk building. Furnishings are not approved to have any signage. Final design and



placement of furnishings shall be approved by the Planning Division through the Class I Administrative Review process.
--

**REQUEST C DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER**

<b>PDC 1.</b>	Non-exempt signs shall be issued a Class I Sign Permit through the Planning Division prior to installation to ensure compliance with the approved Master Sign Plan.
<b>PDC 2.</b>	This action only changes the components of the Master Sign Plan explicitly noted. All other aspects of the Master Sign Plan and Conditions of Approval of Case File DB12-0076 remain in effect.
<b>PDC 3.</b>	The illuminated directional signs at internal circulation drive intersections shall be limited to six (6) square feet. See Finding C24.

**CONDITIONS OF APPROVAL FROM THE ENGINEERING AND BUILDING DIVISIONS FOR ALL REQUESTS**

The following Conditions of Approval are provided by the Engineering and Building Divisions of the City's Community Development Department which have authority over development approval. A number of these Conditions of Approval are not related to land use regulations under the authority of the Development Review Board or Planning Director. Only those Conditions of Approval related to criteria in Chapter 4 of Wilsonville Code and the Comprehensive Plan, including but not limited to those related to traffic level of service, site vision clearance, and concurrency, are subject to the Land Use review and appeal process defined in Wilsonville Code and Oregon Revised Statutes and Administrative Rules. Other Conditions of Approval are based on City Code chapters other than Chapter 4, state law, federal law, or other agency rules and regulations. Questions or requests about the applicability, appeal, exemption or non-compliance related to these other Conditions of Approval should be directed to the City Division with authority over the relevant portion of the development approval.

<b>Engineering Division Conditions:</b>	
<b>Specific Comments:</b>	
<b>PF 1.</b>	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project accept as further modified below.
<b>PF 2.</b>	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts.  <div style="display: flex; justify-content: space-between;"> <span>Estimated New PM Peak Hour Trips</span> <span>117</span> </div>
<b>PF 3.</b>	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.
<b>PF 4.</b>	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.
<b>PF 5.</b>	The project shall connect to the existing Sanitary Sewer stub constructed with the



	Boones Ferry Pointe project.
<b>PF 6.</b>	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.

<b><u>Building Division Conditions:</u></b>	
<b>BD 1.</b>	ACCESSIBLE. At least one of the walk-up service windows shall be accessible.

#### **MASTER EXHIBIT LIST:**

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case Files DB13-0046, DB13-0047, DB13-0048.

- A1.** Staff report and findings (this document)
- A2.** Staff's public hearing presentation slides (not available until public hearing)
- B1.** Applicant's Notebook:
  - 1. Notice of Complete Application Dated December 9, 2013
  - 2. Response to Letter of Incomplete Application Dated December 4, 2013
  - 3. Notice of Incomplete Application Dated November 20, 2013
  - 4. Application Form Signed by Josh Ventjeer, Managing Member of Wilsonville Devco LLC
  - 5. Compliance Report
  - 6. DKS Traffic Memo
  - 7. Site Plans Approved by DRB in Case Files DB12-0074 through DB12-0076
  - 8. Signage (Proposed)
  - 9. Lighting Detail & Photometrics (Proposed)
  - 10. Revised Site & Architectural Plans (Proposed)
- B2.** Plan Sets and Architectural Drawings:
  - Color Architectural Renderings (Proposed)
  - C105 Previous Approved Grading Plan (DB12-0074 through DB12-0076)
  - A1.0 Architectural Site Plan (Proposed)
  - DD101 Composite Utility Plan (Proposed)
  - DD102 Grading Plan (Proposed)
  - L2.0 Landscape Planting Plan (Proposed)
  - L1.0 Landscape Irrigation Plan (Proposed)
  - A-1 Coffee Kiosk Floor Plan and Upper Wall Framing Plan from Pacific Mobile
  - A-3 Coffee Kiosk Wall Elevations from Pacific Mobile
  - E-1 Coffee Kiosk Electrical Plan from Pacific Mobile
  - SE1.0 Photometric Site Plan (Proposed)
  - Sign Drawings
- B3.** Materials Boards for Coffee Kiosk (available at public hearing)
- C1.** Engineering Division Comments and Conditions
- C2.** Building Division Comments and Conditions
- C3.** January 3, 2014 Letter from Barbara Jacobson, Assistant City Attorney, to Alec Laidlaw  
RE: The Human Bean Coffee Store Legal Dispute
- D1.** Written Testimony Received January 3, 2014 on behalf of Garry Lapoint

Development Review Board Panel „A' Staff Report January 6, 2014  
Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk  
DB13-0046, DB13-0047, DB13-0048

Exhibit A1

Page 11 of 50



January 3, 2014 email from Terra Burns, Laidlaw and Laidlaw Paralegal, to Daniel Pauly, Associate Planner  
 January 3, 2014 Letter from Alec Laidlaw to Daniel Pauly, Associate Planner  
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' ORCP 21 Motions  
 Copy of Washington County Circuit Court Case No. C138125CV Declaration of Garry L. Lapoint in Support of Defendants' ORCP 21 Motions  
 Copy of Washington County Circuit Court Case No. C138125CV Defendants' Counsel's Certificate of Compliance (UTCR 5.010)

## **FINDINGS OF FACT:**

1. The statutory 120-day time limit applies to this application. The application was received on November 12, 2013. On November 20, 2013, staff conducted a completeness review within the statutorily allowed 30-day review period, and, on December 4, 2013, the Applicant submitted new materials. Additional materials were submitted on December 7, 2013. On December 9, 2013 the application was deemed complete. The City must render a final decision for the request, including any appeals, by April 8, 2014.
2. Surrounding land uses are as follows:

<b>Compass Direction</b>	<b>Zone:</b>	<b>Existing Use:</b>
North:	PDI	95 <sup>th</sup> /Boones Ferry Intersection/ Riverwood Industrial Campus
East:	PDC	Chevron/Boones Ferry Rd.
South:	PDC	Holiday Inn
West:	PDC	95 <sup>th</sup> Avenue/AGC Center

3. Prior land use actions include:

Edwards Business Center Industrial Park Plat-Stage I  
 97DB28 Stage II, Site Design Review, LaPoint Center  
 DB06-0041, DB06-0043, DB06-0057, DB06-0042 Stage II Final Plan, Site Design Review, Waiver to Building Height, Master Sign Plan for Brice Office Building (Expired)  
 DB12-0074 through DB12-0076 Stage II Final Plan, Site Design Review, and Master Sign Plan for fast food restaurant and multi-tenant commercial building.  
 DB13-0027 Site Design Review for accent lighting on fast food restaurant.

4. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

## CONCLUSIONARY FINDINGS:

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

GENERAL INFORMATION
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### *Section 4.008 Application Procedures-In General*

**Review Criteria:** This section lists general application procedures applicable to a number of types of land use applications and also lists unique features of Wilsonville's development review process.

**Finding:** These criteria are met.

**Explanation of Finding:** The application is being processed in accordance with the applicable general procedures of this Section.

### *Section 4.009 and Subsection 4.140 (.03) Who May Initiate Application and Ownership*

**Review Criterion:** "Except for a Specific Area Plan (SAP), applications involving specific sites may be filed only by the owner of the subject property, by a unit of government that is in the process of acquiring the property, or by an agent who has been authorized by the owner, in writing, to apply." "The tract or tracts of land included in a proposed Planned Development must be in one (1) ownership or control or the subject of a joint application by the owners of all the property included."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The application has been submitted on behalf of the property owner, Wilsonville Devco LLC. The application form is signed by Josh Veentjer, Managing Member.

### *Subsection 4.010 (.02) Pre-Application Conference*

**Review Criteria:** This section lists the pre-application process

**Finding:** These criteria are satisfied.

**Explanation of Finding:** A pre-application conference was held on August 22, 2013 in accordance with this subsection.

### *Subsection 4.011 (.02) B. Lien Payment before Application Approval*

**Review Criterion:** "City Council Resolution No. 796 precludes the approval of any development application without the prior payment of all applicable City liens for the subject property. Applicants shall be encouraged to contact the City Finance Department to verify that there are no outstanding liens. If the Planning Director is advised of outstanding liens while an application is under consideration, the Director shall advise the applicant that payments must be made current or the existence of liens will necessitate denial of the application."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No applicable liens exist for the subject property. The application can thus move forward.



***Subsection 4.035 (.04) A. General Site Development Permit Submission Requirements***

**Review Criteria:** “An application for a Site Development Permit shall consist of the materials specified as follows, plus any other materials required by this Code.” Listed 1. through 6. j.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has provided all of the applicable general submission requirements contained in this subsection.

***Section 4.110 Zoning-Generally***

**Review Criteria:** “The use of any building or premises or the construction of any development shall be in conformity with the regulations set forth in this Code for each Zoning District in which it is located, except as provided in Sections 4.189 through 4.192.” “The General Regulations listed in Sections 4.150 through 4.199 shall apply to all zones unless the text indicates otherwise.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** This proposed development is in conformity with the applicable zoning district and general development regulations listed in Sections 4.150 through 4.199 have been applied in accordance with this Section.

REQUEST A: DB13-0046 STAGE II FINAL PLAN REVISION
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**Planned Development Regulations**

***Subsection 4.140 (.01) Purpose of Planned Development Regulations***

- A1. **Review Criterion:** The proposed Stage II Final Plan shall be consistent with the Planned Development Regulations purpose statement.

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Based on the information provided by the applicant in their narrative, staff is of the professional opinion that the purpose of the planned development regulations is met by the proposed Stage II Final Plan.

***Subsections 4.140 (.02) and (.05) Planned Development Lot Size and Permit Process***

- A2. **Review Criteria:** “Planned Development may be established on lots which are suitable for and of a size to be planned and developed in a manner consistent with the purposes and objectives of Section 4.140.” “Any site designated for development in the Comprehensive Plan may be developed as a Planned Development, provided that it is zoned ‚PD.‘ All sites which are greater than two (2) acres in size, and designated in the Comprehensive Plan for commercial, residential, or industrial use shall be developed as Planned Developments, unless approved for other uses permitted by the Development Code.”

“All parcels of land exceeding two (2) acres in size that are to be used for residential, commercial or industrial development, shall, prior to the issuance of any building permit:

1. Be zoned for planned development;
2. Obtain a planned development permit; and
3. Obtain Development Review Board, or, on appeal, City Council approval.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The development site is less than two (2) acres. However, it is previously been zoned for Planned Development. The property is designated for commercial development in the Comprehensive Plan, and is zoned Planned Development Commercial. The property is of sufficient size and will be developed as a planned development in accordance with this subsection.

***Subsection 4.140 (.04) Professional Design Team Required for Planned Developments***

- A3. **Review Criteria:** “The applicant for all proposed Planned Developments shall certify that the professional services of the appropriate professionals have been utilized in the planning process for development. One of the professional consultants chosen by the applicant shall be designated to be responsible for conferring with the planning staff with respect to the concept and Explanation of the plan.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant’s compliance narrative lists the appropriate professionals involved in the planning and permitting process. Ben Altman of SFA Design Group has been designated the coordinator for the planning portion of the project.



## **Stage II Final Plan Submission Requirements and Process**

### ***Subsection 4.140 (.09) A. Timing of Submission***

- A4. **Review Criterion:** “Unless an extension has been granted by the Development Review Board, within two (2) years after the approval or modified approval of a preliminary development plan (Stage I), the applicant shall file with the City Planning Department a final plan for the entire development or when submission in stages has been authorized pursuant to Section 4.035 for the first unit of the development”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** A previous Stage I approval identified the subject property as a future commercial stage. A Stage II Final Plan was approved consistent with the previous Stage I Master Plan in March 2013. This application requests revision of the Stage II Final plan.

### ***Subsection 4.140 (.09) C. Conformance with Stage I and Additional Submission Requirements***

- A5. **Review Criteria:** “The final plan shall conform in all major respects with the approved preliminary development plan, and shall include all information included in the preliminary plan plus the following:” listed 1. through 6.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant states, and staff concurs, that the Stage II plans substantially conforms to the Stage I Master plan. The applicant has provided the required drawings and other documents showing all the additional information required by this subsection.

### ***Subsection 4.140 (.09) D. Stage II Final Plan Detail***

- A6. **Review Criterion:** “The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development or phase of development.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The applicant has provided sufficiently detailed information to indicate fully the ultimate operation and appearance of the development, including a detailed site plan, landscape plans, floor plans, elevation drawings, and material information.

### ***Subsection 4.140 (.09) E. Submission of Legal Documents***

- A7. **Review Criterion:** “Copies of legal documents required by the Development Review Board for dedication or reservation of public facilities, or for the creation of a non-profit homeowner’s association, shall also be submitted.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No additional legal documentation is required for dedication or reservation of public facilities.



***Subsection 4.140 (.09) J. Planned Development Permit Requirements***

- A8. **Review Criteria:** "A planned development permit may be granted by the Development Review Board only if it is found that the development conforms to all the following criteria, as well as to the Planned Development Regulations in Section 4.140:" listed J. 1. through 3. Includes traffic level of service requirements.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Proposed is a coffee kiosk in an area designated for commercial in the Comprehensive Plan. The proposed use is at a corner and clustered with commercial uses similarly serving the travelling public, thus being part of a commercial center rather than strip commercial development. As demonstrated in the DKS Traffic Memo in the applicant's notebook, Exhibit B1, specifically page 2 of 3 of the memo, the required traffic level of service is being maintained. All utilities and services are available to serve the development.

**Commercial Development in Any Zone**

***Subsection 4.116 (.01) Commercial Development to be in Centers and Complexes***

- A9. **Review Criterion:** "Commercial developments shall be planned in the form of centers or complexes as provided in the City's Comprehensive Plan. As noted in the Comprehensive Plan, Wilsonville's focus on centers or complexes is intended to limit strip commercial development."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The approved Boones Ferry Pointe commercial development is in the form of a center clustered at an intersection with other commercial development.

***Subsection 4.116 (.05) All Commercial Activity to be Completely Enclosed***

- A10. **Review Criteria:** "All businesses, service or processing, shall be conducted wholly within a completely enclosed building; except for:" Listed A. through G.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All commercial activity other than exempt activities will be within in the proposed buildings. The only exceptions from the list given noted by the applicant are off-street parking for customers and employees, and outdoor seating. Staff notes there is the possibility as well for temporary outside sales.

***Subsection 4.116 (.07) Uses Limited to those Meeting Industrial Performance Standards***

- A11. **Review Criteria:** "Uses shall be limited to those which will meet the performance standards specified in Section 4.135(.05), with the exception of 4.135(.05)(M.)(3.)."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed development facilitates commercial uses meeting these performance standards. It is understood that all uses will need to continue to meet these standards over time.

***Subsection 4.116 (.08) Vision Clearance Standards for Corner Lots***



A12. **Review Criteria:** "Corner lots shall conform to the vision clearance standards set forth in Section 4.177."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Vision clearance has been reviewed by the City's Engineering Division and the City's Public Works standards for vision clearance are met.

***Subsection 4.116 (.10) Commercial Development Generally***

A13. **Review Criteria:** This subsection lists a number of requirements for commercial development such as setback, lot size, lot coverage, and street frontage requirements.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All the applicable standards listed in this subsection are met.

***Subsection 4.116 (.14) B. Prohibited Uses***

A14. **Review Criteria:** "Any use that violates the performance standards of Section 4.135(.05), other than 4.135(.05)(M.)(3.) is prohibited within commercial developments."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No uses prohibited by this subsection are proposed.

***Standards Applying in All Planned Development Zones***

***Subsection 4.118 (.01) Additional Height Guidelines***

A15. **Review Criterion:** "In cases that are subject to review by the Development Review Board, the Board may further regulate heights as follows:

A. Restrict or regulate the height or building design consistent with adequate provision of fire protection and fire-fighting apparatus height limitations.

B. To provide buffering of low density developments by requiring the placement of three or more story buildings away from the property lines abutting a low density zone.

C. To regulate building height or design to protect scenic vistas of Mt. Hood or the Willamette River."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Staff does not recommend the Development Review Board require a height less than the applicant proposes as the proposed height provides for fire protection access, does not abut a low density zone, and does not impact scenic views of Mt. Hood or the Willamette River.

***Subsection 4.118 (.03) Waivers***

A16. **Review Criteria:** "Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may" waive a number of standards as listed in A. through E.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No planned development waivers have been requested by the applicant or are necessary to approve the application as proposed.



***Subsection 4.118 (.03) E. Other Requirements or Restrictions***

- A17. **Review Criteria:** “Notwithstanding the provisions of Section 4.140 to the contrary, the Development Review Board, in order to implement the purposes and objectives of Section 4.140, and based on findings of fact supported by the record may adopt other requirements or restrictions, inclusive of, but not limited to, the following:” Listed 1. through 12.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No additional requirements or restrictions are recommended pursuant to this subsection.

***Subsection 4.118 (.04) Effect of Determination of Compliance and Conditions of Approval on Development Cost***

- A18. **Review Criteria:** “The Planning Director and Development Review Board shall, in making their determination of compliance in attaching conditions, consider the effects of this action on availability and cost. The provisions of this section shall not be used in such a manner that additional conditions, either singularly or cumulatively, have the effect of unnecessarily increasing the cost of development. However, consideration of these factors shall not prevent the Board from imposing conditions of approval necessary to meet the minimum requirements of the Comprehensive Plan and Code.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** It is staff’s professional opinion that the determination of compliance or attached conditions do not unnecessarily increase the cost of development, and no evidence has been submitted to the contrary.

***Subsection 4.118 (.05) Requirements to Set Aside Tracts for Certain Purposes***

- A19. **Review Criteria:** “The Planning Director, Development Review Board, or on appeal, the City Council, may as a condition of approval for any development for which an application is submitted, require that portions of the tract or tracts under consideration be set aside, improved, conveyed or dedicated for the following uses:” Recreational Facilities, Open Space Area, Easements.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No additional tracts are being required for the purposes given.

***Subsection 4.118 (.09) Habitat Friendly Development Practices***

- A20. **Review Criteria:** “To the extent practicable, development and construction activities of any lot shall consider the use of habitat-friendly development practices, which include:

A. Minimizing grading, removal of native vegetation, disturbance and removal of native soils, and impervious area;

B. Minimizing adverse hydrological impacts on water resources, such as using the practices described in Part (a) of Table NR-2 in Section 4.139.03, unless their use is prohibited by an applicable and required state or federal permit, such as a permit required under the federal Clean Water Act, 33 U.S.C. §§1251 et seq., or the federal Safe Drinking Water Act, 42 U.S.C. §§300f et seq., and including conditions or plans required by such permit;

C. Minimizing impacts on wildlife corridors and fish passage, such as by using the practices described in Part (b) of Table NR-2 in Section 4.139.03; and



D. Using the practices described in Part (c) of Table NR-2 in Section 4.139.03.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As stated by the applicant and adopted by DRB for the previous Stage II approval, “The site has previously been rough graded and there is no significant native vegetation. The site does not contain any SROZ and no fish or wildlife habitats are associated with this property. The site has been designed consistent with the Habitat-Friendly practices. The storm system design provides for on-site water quality and volume control which protects the downstream wetland area south of the AGC building.” The proposal does not significantly alter compliance as previously found.

### **Planned Development Commercial Zone**

#### ***Subsection 4.131 (.01) A. 1. Uses Typically Permitted***

A21. **Review Criteria:** This subsection lists the uses that are typically permitted in the PDC Zone.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposal replaces an approved but un-built multi-tenant commercial building with drive-thru coffee kiosk which is an allowed service establishment use.

#### ***Subsection 4.131 (.02) Prohibited Uses***

A22. **Review Criteria:** This subsection lists the prohibited uses in the PDC Zone.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has not proposed any prohibited uses for the site.

#### ***Subsection 4.131 (.03) 1. Block and Access Standards: Connectivity for Different Modes***

A23. **Review Criteria:** “The Development Review Board shall determine appropriate conditions of approval to assure that adequate connectivity results for pedestrians, bicyclists, and motor vehicle drivers. Consideration shall be given to the use of public transit as a means of meeting access needs.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No new blocks are proposed, and the proposed development proposes to use the existing shared private driveway on 95<sup>th</sup> Avenue partially on the subject property. A development agreement has been agreed upon between the owner of the subject property, neighboring properties, and the City ensuring appropriate access from the shared driveway.

### **On-site Pedestrian Access and Circulation**

#### ***Subsection 4.154 (.01) B. 1. Continuous Pathway System***

A24. **Review Criterion:** “A pedestrian pathway system shall extend throughout the development site and connect to adjacent sidewalks, and to all future phases of the development, as applicable.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The applicant has provided a network a network of pathways from the proposed location of the coffee kiosk to support a continuous pathway system

throughout the site. This includes two connections to the 95<sup>th</sup> Avenue sidewalk which then connects to Carl's Jr. and Holiday Inn as well as a pathway connection to the east to provide access to parking, trash enclosures, and the Chevron property. See sheet A1.0 in Exhibit B2.

***Subsection 4.154 (.01) B. 2. Safe, Direct, and Convenient Pathways***

A25. **Review Criteria:** "Pathways within developments shall provide safe, reasonably direct, and convenient connections between primary building entrances and all adjacent parking areas, recreational areas/playgrounds, and public rights-of-way and crosswalks based on all of the following criteria:

- a. Pedestrian pathways are designed primarily for pedestrian safety and convenience, meaning they are free from hazards and provide a reasonably smooth and consistent surface.
- b. The pathway is reasonably direct. A pathway is reasonably direct when it follows a route between destinations that does not involve a significant amount of unnecessary out-of-direction travel.
- c. The pathway connects to all primary building entrances and is consistent with the Americans with Disabilities Act (ADA) requirements.
- d. All parking lots larger than three acres in size shall provide an internal bicycle and pedestrian pathway pursuant to Section 4.155(.03)(B.)(3.)(d.)."

**Finding:** These criteria are satisfied.

**Explanation of Finding:**

- All proposed pathways are of smooth and consistent concrete and no hazards are evident on the site plan.
- All proposed pathways are reasonably direct. The path from Carl's Jr. to the 95<sup>th</sup> Avenue sidewalk then across to the coffee kiosk is reasonably direct. The path from the intersection of 95<sup>th</sup> Avenue/Boones Ferry is reasonably direct. A direct path is provided from the parking stalls and trash enclosure serving the coffee kiosk.
- Where required, pathways meet ADA requirements or will be required to by the building code.
- The parking lot is not larger than 3 acres in size.

***Subsection 4.154 (.01) B. 3. Vehicle/Pathway Separation***

A26. **Review Criterion:** "Except as required for crosswalks, per subsection 4, below, where a pathway abuts a driveway or street it shall be vertically or horizontally separated from the vehicular lane. For example, a pathway may be vertically raised six inches above the abutting travel lane, or horizontally separated by a row of bollards."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** All pathways affected by this review are separated consistent with this subsection. Staff notes pathways marked during previous phases of development do not meet this standard.



***Subsection 4.154 (.01) B. 4. Crosswalks***

A27. **Review Criteria:** “Where a pathway crosses a parking area or driveway, it shall be clearly marked with contrasting paint or paving materials (e.g., pavers, light-color concrete inlay between asphalt, or similar contrast).”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The applicant has proposed crosswalks meeting this standard.

***Subsection 4.154 (.01) B. 5. Pathway Width and Surface***

A28. **Review Criteria:** “Primary pathways shall be constructed of concrete, asphalt, brick/masonry pavers, or other durable surface, and not less than five (5) feet wide. Secondary pathways and pedestrian trails may have an alternative surface except as otherwise required by the ADA.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Primary pathways are the required width. The pathway from the parking area/trash enclosure near Chevron is not a primary pathway and is allowed to be less than five (5) feet in width.

***Subsection 4.154 (.01) B. 6. Signs for Pathways***

A29. **Review Criteria:** “All pathways shall be clearly marked with appropriate standard signs.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No pathways requiring signs are proposed.

**Parking and Loading**

***Subsection 4.155 (.02) General Parking Provisions***

A30. **Review Criteria:** This subsection lists a number of general provisions for parking.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has provided sufficient information demonstrating compliance with the provisions in this subsection applicable to State II Final Plan review. Among the information provided are parking calculations on sheet A1.0. of Exhibit B2. Staff specifically points out the following:

- In relation to provision B. all parking areas are accessible and usable for parking
- In relation to provisions D. the provided parking meets the sum of the minimum parking for the fast food restaurant and the coffee kiosk.
- In relation to provision J. a note on sheet A1.0 of Exhibit B2 states this requirement will be met.
- In relation to provision K. the parking area is paved and provided with adequate drainage. See Sheets A1.0 and DD102 in Exhibit B2.
- In relation to provision L. the parking lot lighting is fully shielded as to not shine into adjoining structures or the eyes of passerby's.
- In relation to provision N. 6 compact parking spaces are proposed, which is less than forty (40) percent of the proposed parking spaces. They are shown appropriately marked on Sheet A1.0 of Exhibit B2.



***Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas***

A31. **Review Criteria:** "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant other commercial delivery parking are in the same area of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic.

***Subsection 4.155 (.03) B. 1.-3. Parking Area Landscaping***

A32. **Review Criteria:** "Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:" Listed 1. through 3.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown in the planting plans (applicant's sheet L1.0), the required amount of landscaping and trees are provided.

***Subsection 4.155 (.03) C. Parking and Loading Areas-Safe and Convenient Access***

A33. **Review Criterion:** "Be designed for safe and convenient access that meets ADA and ODOT standards. All parking areas which contain ten (10) or more parking spaces, shall for every fifty (50) standard spaces., provide one ADA-accessible parking space that is constructed to building code standards, Wilsonville Code 9.000."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The required ADA space for the coffee kiosk is provided.

***Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation***

A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95<sup>th</sup> Avenue and their access and parking areas are interconnected.



Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site.

***Subsection 4.155 (.03) G. Parking Minimum and Maximum***

A35. **Review Criteria:** “Tables 5, below, shall be used to determine the minimum and maximum parking standards for various land uses. The minimum number of required parking spaces shown on Tables 5 shall be determined by rounding to the nearest whole parking space.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown in the table below, the proposed parking is consistent with Table 5: Parking Standards. Staff notes the parking count differs from the submitted drawings and narrative, Exhibits B1 and B2, and this finding corrects the inaccurate counts provided in those documents.

Use	Floor Area	Min	Max	Min	Max	Provided
Fast food (with drive-thru)	2,867	9.9 per 1,000 SF	14.9 per 1000 SF	29	43	
Coffee Kiosk	450	9.9 per 1,000 SF	14.9 per 1000 SF	4	7	
Standard Spaces						29
Compact Spaces (40% Max)				--	18	6
Total Non-ADA Spaces				33	50	35
ADA Spaces				2	--	2
<b>Total Parking Spaces</b>						<b>37</b>

***Subsection 4.155 (.04) A. Bicycle Parking-General Provisions***

A36. **Review Criteria:** This subsection lists general provisions for bicycle parking, listed 1. through 4., including required number of spaces.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** A minimum of four (4) spaces are required for the drive-thru coffee kiosk, and four (4) are provided.



#### ***Subsection 4.155 (.04) B. Bicycle Parking-Standards***

A37. **Review Criteria:** This subsection lists standards for required bicycle parking, listed 1. through 5., including size, access aisle size, spacing between racks, anchoring of lockers and racks, and location standards.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown on sheet A1.0 of Exhibit B2 each of the 4 required parking stalls exceeds the minimum dimensions of 2 feet by 6 feet. There is sufficient space to use the bicycle racks without obstructions. Bicycle racks will be securely fastened. Five (5) feet of spacing is not provided between the bicycle racks and the kiosk. The bicycle racks are further than 30 feet from the primary entrance, which in this case staff understands to be the service window open to pedestrians. Condition of Approval PDA 2 will ensure bicycle parking is placed to meet all requirements of this subsection including the spacing from the building and distance from the service window.

#### ***Subsection 4.155 (.05) Minimum Off-street Loading Requirements***

A38. **Review Criteria:** This subsection defines the requirements for loading berths including when loading berths are required and size requirements.

**Finding:** These criteria are not applicable.

**Explanation of Finding:** No loading berths are required for commercial uses of the proposed floor area.

#### ***Subsection 4.155 (.06) Carpool and Vanpool Parking Requirements***

A39. **Review Criteria:** This subsection defines the requirements for carpool and vanpool parking.

**Finding:** These criteria are not applicable.

**Explanation of Finding:** No carpool or vanpool parking is required for commercial parking lots of the proposed size.

#### ***Section 4.167 Access, Ingress, and Egress***

A40. **Review Criterion:** "Each access onto streets or private drives shall be at defined points as approved by the City and shall be consistent with the public's health, safety and general welfare. Such defined points of access shall be approved at the time of issuance of a building permit if not previously determined in the development permit."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The access points for the development site are existing and approved by the City. No change in access is proposed.

#### **Natural Features**

#### ***Section 4.171 Protection of Natural Features and Other Resources***

A41. **Review Criteria:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.



**Finding:** These criteria are satisfied.

**Explanation of Finding:** None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

### **Public Safety and Crime Prevention**

#### ***Subsection 4.175 (.01) Design to Deter Crime and Ensure Public Safety***

A42. **Review Criterion:** "All developments shall be designed to deter crime and insure public safety."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The applicant asserts, and staff concurs, that attention has been given to site design to deter crime and allow natural surveillance. Staff has no evidence that the proposed development would otherwise negatively impact public safety.

#### ***Subsection 4.175 (.02) Addressing and Directional Signing***

A43. **Review Criteria:** "Addressing and directional signing shall be designed to assure identification of all buildings and structures by emergency response personnel, as well as the general public."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The design of the site provides for appropriate addressing and directional signage to assure easy identification.

#### ***Subsection 4.175 (.03) Surveillance and Police Access***

A44. **Review Criterion:** "Areas vulnerable to crime shall be designed to allow surveillance. Parking and loading areas shall be designed for access by police in the course of routine patrol duties."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The parking and loading areas are easily assessable to law enforcement.

#### ***Subsection 4.175 (.04) Lighting to Discourage Crime***

A45. **Review Criterion:** "Exterior lighting shall be designed and oriented to discourage crime."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** While exterior lighting has been minimized it was previously found to discourage crime and continues to do so.

### **Landscaping Standards**

#### ***Subsection 4.176 (.01) Purpose of Landscape, Screening, and Buffering***

A46. **Review Criteria:** "This Section consists of landscaping and screening standards and regulations for use throughout the City. The regulations address materials, placement, layout, and timing of installation. The City recognizes the ecological and economic value of landscaping and requires the use of landscaping and other screening or buffering to:" Listed A. through K.

**Finding:** These criteria are satisfied.



**Explanation of Finding:** In complying with the various landscape standards in Section 4.176 the applicant has demonstrated the proposed Stage II Final Plan is in compliance with the landscape purpose statement.

***Subsection 4.176 (.02) B. Landscaping Standards and Code Compliance***

- A47. **Review Criteria:** “All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

***Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent***

- A48. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant’s submitted landscape plans (applicant’s sheets L 1.0 and L2.0) show a variety of plant materials and placement consistent with the general landscape standard, specifically along the frontage with SW 95<sup>th</sup> Avenue and SW Boones Ferry Road.

***Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials***

- A49. **Review Criteria:** “Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.

b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The planting plan (applicant’s sheet L2.0) shows landscaping meeting the functional requirements of this subsection.

***Subsection 4.176 (.02) E. 1. High Screen Landscape Standard-Intent***

- A50. **Review Criterion:** “The High Screen Landscaping Standard is a landscape treatment that relies primarily on screening to separate uses or developments. It is intended to be applied in situations where visual separation is required.”

**Finding:** This criterion is satisfied.



**Explanation of Finding:** No development related to the coffee kiosk requires the high screen standards be applied, especially as menu boards are oriented as to not be visible off site. If menu boards are relocated so the face of the sign faces Boones Ferry Road or 95<sup>th</sup> Avenue, then additional review will be needed to provide landscaping that provides appropriate screening such as the planting screening the Carl's Jr. menu board.

***Subsection 4.176 (.03) Landscape Area and Locations***

- A51. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** According to the applicant twenty-eight percent (28%) of the site is proposed to be in landscaping. The landscaping is in a variety of areas throughout the site, including the street frontage areas. Landscaping is placed along the streets to soften the look of off-street parking areas. As shown on the applicant's sheet L 2.0 a variety of landscape materials are being used.

***Subsection 4.176 (.04) Buffering and Screening***

- A52. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.

***Subsection 4.176 (.09) Landscape Plans***

- A53. **Review Criteria:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

**Finding:** These criteria are satisfied.



**Explanation of Finding:** Applicant's sheets L1.0 and L2. in Exhibit B2 provide the required information.

#### ***Subsection 4.176 (.12) Mitigation Standards***

A54. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No existing native plants are being removed requiring a mitigation plan pursuant to this subsection.

#### **Other Standards**

#### ***Section 4.177 Street Improvement Standards***

A55. **Review Criteria:** This section establishes improvement standards for public streets, along with private access drives and travel lanes.

**Finding:** These criteria are satisfied.

**Explanation of Finding:**

- Access is provided to the proposed development clear of any obstructions.
- The travel lanes are proposed to be asphalt and have been constructed to City standards.
- All access lanes are a minimum of 12 feet.
- The development will comply with requirements of the Fire District.
- No construction is proposed in the public right-of-way

#### ***Section 4.179 Mixed Solid Waste and Recyclables Storage***

A56. **Review Criteria:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No changes to the mixed solid waste facilities are proposed. The proposed coffee kiosk replaces a larger multi-tenant commercial building. The mixed-solid waste enclosure designed and built for the multi-tenant building is adequately sized for the smaller coffee kiosk.

#### ***Sections 4.199.20 Outdoor Lighting***

A57. **Review Criteria:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All the outdoor lighting for the new development on the site is being required to comply with the outdoor lighting ordinance. A photometric site plan has been provided, sheet SE1.0 (Exhibit B2), showing the functional effect of the proposed



lighting on the site. Detailed requirements for site lighting are being reviewed as a component of Request B, Site Design Review, of this application. See Findings B32 through B39.

***Sections 4.300-4.320 and Subsection 4.118 (.02) Underground Installation of Utilities***

A58. **Review Criteria:** These sections list requirements regarding the underground installation of utilities.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** There are no existing overhead facilities that require undergrounding as part of this development. All new utilities associated with the development are proposed to be installed underground.

## REQUEST B: DB13-0047 SITE DESIGN REVIEW

### Site Design Review

#### ***Subsection 4.400 (.01) and Subsection 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.***

- B1. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant provides a response to this subsection on pages 18-20 of the compliance narrative in their notebook, Exhibit B1. Staff summarizes the compliance with this subsection as follows:

*Excessive Uniformity:* The design of the coffee kiosk is different from the Carl's Jr. building, yet complementary, and has an architectural character unique from other surrounding development preventing uniformity. The coffee kiosk uses the same brick around the base as used on the Carl's Jr. building. lap siding and board and baton siding are used similarly as with the Carl's Jr. building, only painted different colors.

*Inappropriate or Poor Design of the Exterior Appearance of Structures:* The coffee kiosk is professionally designed with a unique historic “small-town” theme indicative of other commercial development in Wilsonville including Old Town Square (Fred Meyer development). The result is a professional design appropriate for Wilsonville.

*Inappropriate or Poor Design of Signs:* Signs are typical of the type of development proposed and meet applicable City standards. See Request C, Master Sign Plan.

*Lack of Proper Attention to Site Development:* The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape and available access, demonstrating appropriate attention being given to site development.

*Lack of Proper Attention to Landscaping:* Landscaping is provided exceeding the area requirements, has been professionally designed by a landscape architect, and includes a variety of plant materials, all demonstrating appropriate attention being given to landscaping.

#### ***Subsection 4.400 (.02) and Subsection 4.421 (.03) Purposes of Objectives of Site Design Review***

- B2. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:” Listed A through J.



**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant provides a response to design on pages 18-20 of the compliance narrative in their notebook, Exhibit B1, demonstrating compliance with the listed purposes and objectives. In short, the proposal provides a high quality design appropriate for the site and its location in Wilsonville.

#### ***Section 4.420 Development in Accordance with Plans***

- B3. **Review Criteria:** The section states that development is required in accord with plans approved by the Development Review Board.

**Finding:** These criteria will be satisfied by Condition of Approval PDB 1.

**Explanation of Finding:** A condition of approval has been included to ensure construction, site development, and landscaping are carried out in substantial accord with the Development Review Board approved plans, drawings, sketches, and other documents. No building permits will be granted prior to development review board approval.

#### ***Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards***

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met.

#### ***Subsection 4.421 (.05) Site Design Review-Conditions of Approval***

- B5. **Review Criterion:** "The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

#### ***Subsection 4.421 (.06) Color or Materials Requirements***

- B6. **Review Criterion:** "The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City."

**Finding:** This criterion is satisfied.



**Explanation of Finding:** All material and color information has been provided by the applicant.

#### ***Section 4.430 Design of Trash and Recycling Enclosures***

- B7. **Review Criteria:** "The following locations, design and access standards for mixed solid waste and recycling storage areas shall be applicable to the requirements of Section 4.179 of the Wilsonville City Code." Listed (.02) A. through (.04) C.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** No design to the trash and recycling enclosures are proposed as part of this application.

#### ***Section 4.440 Site Design Review-Submittal Requirements***

- B8. **Review Criteria:** This section lists additional submittal requirements for Site Design Review in addition to those listed in Section 4.035.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has submitted the required additional materials, as applicable.

#### ***Subsection 4.450 (.01) Landscape Installation or Bonding***

- B9. **Review Criterion:** "All landscaping required by this section and approved by the Board shall be installed prior to issuance of occupancy permits, unless security equal to one hundred and ten percent (110%) of the cost of the landscaping as determined by the Planning Director is filed with the City assuring such installation within six (6) months of occupancy. "Security" is cash, certified check, time certificates of deposit, assignment of a savings account or such other assurance of completion as shall meet with the approval of the City Attorney. In such cases the developer shall also provide written authorization, to the satisfaction of the City Attorney, for the City or its designees to enter the property and complete the landscaping as approved. If the installation of the landscaping is not completed within the six-month period, or within an extension of time authorized by the Board, the security may be used by the City to complete the installation. Upon completion of the installation, any portion of the remaining security deposited with the City shall be returned to the applicant."

**Finding:** This criterion will be satisfied by Condition of Approval PDB 2.

**Explanation of Finding:** The condition of approval will assure installation or appropriate security at the time occupancy is requested.

#### ***Subsection 4.450 (.02) Approved Landscape Plan Binding***

- B10. **Review Criterion:** "Action by the City approving a proposed landscape plan shall be binding upon the applicant. Substitution of plant materials, irrigation systems, or other aspects of an approved landscape plan shall not be made without official action of the Planning Director or Development Review Board, as specified in this Code."

**Finding:** This criterion will be satisfied by Condition of Approval PDB 3.

**Explanation of Finding:** The condition of approval shall provide ongoing assurance this criterion is met.



***Subsection 4.450 (.03) Landscape Maintenance and Watering***

B11. **Review Criterion:** “All landscaping shall be continually maintained, including necessary watering, weeding, pruning, and replacing, in a substantially similar manner as originally approved by the Board, unless altered with Board approval.”

**Finding:** This criterion will be satisfied by Condition of Approval PDB 4.

**Explanation of Finding:** The condition of approval will ensure landscaping is continually maintained in accordance with this subsection.

***Subsection 4.450 (.04) Addition and Modifications of Landscaping***

B12. **Review Criterion:** “If a property owner wishes to add landscaping for an existing development, in an effort to beautify the property, the Landscape Standards set forth in Section 4.176 shall not apply and no Plan approval or permit shall be required. If the owner wishes to modify or remove landscaping that has been accepted or approved through the City’s development review process, that removal or modification must first be approved through the procedures of Section 4.010.”

**Finding:** This criterion will be satisfied by Condition of Approval PDB 4.

**Explanation of Finding:** The condition of approval shall provide ongoing assurance that this criterion is met by preventing modification or removal without the appropriate City review.

**On-site Pedestrian Access and Circulation**

***Subsection 4.154 (.01) B. Standards for On-site Pedestrian Access and Circulation***

B13. **Review Criteria:** This subsection lists standards for on-site pedestrian access and circulation, listed 1. through 6.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The design of the on-site pedestrian access and circulation described and illustrated in the applicant’s submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Findings A24 through A29 under Request A.

**Parking**

***Subsection 4.155 (.02) Provision and Maintenance of Off-Street Parking***

B14. **Review Criteria:** This subsection lists general provisions for parking, A. through O.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The design of the parking described and illustrated in the applicant’s submitted narrative and plans in relation to these provisions are consistent with the purpose of site design review and the proposed revised Stage II Final Plan for the site. See Finding A30 under Request A.

***Subsection 4.155 (.03) B. 1.-3. Landscaping of Parking Areas***

B15. **Review Criteria:** “Parking and loading or delivery areas shall be landscaped to minimize the visual dominance of the parking or loading area, as follows:” Listed 1. through 3.

**Finding:** These criteria are satisfied.



**Explanation of Finding:** As shown in the planting plans, sheet L2.0 of Exhibit B2, landscape screening is provided between the proposed parking and the public right-of-way. Trees are provided for the proposed parking spaces as required by this subsection. Tree planting areas generally meet the minimum size requirements. However, the planting area with a tree between a parking stall and the entry to the coffee drive-thru queuing area is less than 8 feet wide. Staff has examined other site design option to make this a wider planting area, but site constraints prevent making it wider. It is desirable to have a tree and other plantings at this location and the planter is as wide a practicable balancing competing design requirements and site restraints.

#### ***Section 4.171 Protection of Natural Features and Other Resources***

- B16. **Review Criterion:** This section provides for the protection of a number of natural features and other resources including: general terrain preparation, hillsides, trees and wooded areas, high voltage powerline easements and rights of way and petroleum pipeline easements, earth movement hazard areas, soil hazard areas, historic resources, and cultural resources.

**Finding:** This criterion is satisfied.

**Explanation of Finding:** None of the resources listed in this section exist on the site or will be foreseeably negatively impacted by the development.

#### **Landscaping**

##### ***Subsection 4.176 (.02) B. Landscape Standards and Compliance with Code***

- B17. **Review Criterion:** “All landscaping and screening required by this Code must comply with all of the provisions of this Section, unless specifically waived or granted a Variance as otherwise provided in the Code. The landscaping standards are minimum requirements; higher standards can be substituted as long as fence and vegetation-height limitations are met. Where the standards set a minimum based on square footage or linear footage, they shall be interpreted as applying to each complete or partial increment of area or length”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No waivers or variances to landscape standards have been requested. Thus all landscaping and screening must comply with standards of this section.

##### ***Subsection 4.176 (.02) C. 1. General Landscape Standards-Intent***

- B18. **Review Criteria:** “The General Landscaping Standard is a landscape treatment for areas that are generally open. It is intended to be applied in situations where distance is used as the principal means of separating uses or developments and landscaping is required to enhance the intervening space. Landscaping may include a mixture of ground cover, evergreen and deciduous shrubs, and coniferous and deciduous trees.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant’s sheet L2.0 of Exhibit B2 shows a variety of plant materials and placement consistent with the general landscape standard.

##### ***Subsection 4.176 (.02) C. 2. General Landscape Standards-Required Materials***

- B19. **Review Criteria:** “Shrubs and trees, other than street trees, may be grouped. Ground cover plants must fully cover the remainder of the landscaped area (see Figure 21: General

Development Review Board Panel „A’ Staff Report January 6, 2014

Exhibit A1

Boones Ferry Pointe: The Human Bean Drive-thru Coffee Kiosk

DB13-0046, DB13-0047, DB13-0048

Page 35 of 50



Landscaping). The General Landscaping Standard has two different requirements for trees and shrubs:

- a. Where the landscaped area is less than 30 feet deep, one tree is required for every 30 linear feet.
- b. Where the landscaped area is 30 feet deep or greater, one tree is required for every 800 square feet and two high shrubs or three low shrubs are required for every 400 square feet."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The planting plan, sheet L2.0 of Exhibit B2, shows landscaping meeting the requirements of this subsection.

#### ***Subsection 4.176 (.03) Landscape Area and Locations***

- B20. **Review Criteria:** "Not less than fifteen percent (15%) of the total lot area, shall be landscaped with vegetative plant materials. The ten percent (10%) parking area landscaping required by section 4.155.03(B)(1) is included in the fifteen percent (15%) total lot landscaping requirement. Landscaping shall be located in at least three separate and distinct areas of the lot, one of which must be in the contiguous frontage area. Planting areas shall be encouraged adjacent to structures. Landscaping shall be used to define, soften or screen the appearance of buildings and off-street parking areas. Materials to be installed shall achieve a balance between various plant forms, textures, and heights. The installation of native plant materials shall be used whenever practicable."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Consistent with the proposed revised Stage II Final Plan for the site, the proposed design of the site provides for more than the required amount of landscaping and landscaping in at least three separate and distinct areas, including the area along SW 95<sup>th</sup> Avenue and SW Boones Ferry Road. See Finding A51 of Request A. The planting plans, sheet L2.0 of Exhibit B2, show landscape placed in areas that will define, soften, and screen the appearance of buildings and off-street parking areas.

#### ***Subsection 4.176 (.04) Buffering and Screening***

- B21. **Review Criteria:** "Additional to the standards of this subsection, the requirements of the Section 4.137.5 (Screening and Buffering Overlay Zone) shall also be applied, where applicable.

C. All exterior, roof and ground mounted, mechanical and utility equipment shall be screened from ground level off-site view from adjacent streets or properties.

D. All outdoor storage areas shall be screened from public view, unless visible storage has been approved for the site by the Development Review Board or Planning Director acting on a development permit.

E. In all cases other than for industrial uses in industrial zones, landscaping shall be designed to screen loading areas and docks, and truck parking.

F. In any zone any fence over six (6) feet high measured from soil surface at the outside of fenceline shall require Development Review Board approval."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The buildings are designed so architectural parapets screen roof mounted equipment. Mixed-solid waste and recycling storage areas are within screening enclosures. No additional outdoor storage areas are proposed.



***Subsection 4.176 (.06) A. Plant Materials-Shrubs and Groundcover***

B22. **Review Criteria:** This subsection establishes plant material and planting requirements for shrubs and ground cover.

**Finding:** These criteria are satisfied or will be satisfied by Condition of Approval PDB 5.

**Explanation of Finding:** The condition of approval requires that the detailed requirements of this subsection are met.

***Subsection 4.176 (.06) B. Plant Materials-Trees***

B23. **Review Criteria:** This subsection establishes plant material requirements for trees.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The plants material requirements for trees will be met as follows:

- The applicant's planting plan, sheet L2.0 of Exhibit B2, shows all trees as B&B (Balled and Burlapped)
- Landscaping is being required to meet ANSI standards.
- The applicant's planting plan lists tree sizes required by code.

***Subsection 4.176 (.06) D. Plant Materials-Street Trees***

B24. **Review Criteria:** This subsection establishes plant material requirements for street trees.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As shown in their planting plan, sheet L2.0 of Exhibit B2, the applicant proposes Bowhall Maple street trees (*Acer rubrum* "Bowhall"). The proposed trees are a cultivar of *Acer rubrum*, which is listed as a satisfactory street tree in this subsection. The trees are proposed to be planted at 3" caliper, the required size for arterial streets.

***Subsection 4.176 (.06) E. Types of Plant Species***

B25. **Review Criteria:** This subsection discusses use of existing landscaping or native vegetation, selection of plant materials, and prohibited plant materials.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has provided sufficient information showing the proposed landscape design meets the standards of this subsection. See sheet L2.0 of Exhibit B2.

***Subsection 4.176 (.06) G. Exceeding Plant Material Standards***

B26. **Review Criterion:** "Landscape materials that exceed the minimum standards of this Section are encouraged, provided that height and vision clearance requirements are met."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The selected landscape materials do not violate any height or vision clearance requirements.



#### ***Subsection 4.176 (.07) Installation and Maintenance of Landscaping***

B27. **Review Criteria:** This subsection establishes installation and maintenance standards for landscaping.

**Finding:** These criteria are satisfied or will be satisfied by Condition of Approval PDB 6.

**Explanation of Finding:** The installation and maintenance standards are or will be met as follows:

- Plant materials are required to be installed to current industry standards and be properly staked to ensure survival
- Plants that die are required to be replaced in kind, within one growing season, unless appropriate substitute species are approved by the City.
- Sheet L1.0 of Exhibit B2 shows a permanent built-in irrigation system with an automatic controller satisfying the related standards of this subsection.

#### ***Subsection 4.176 (.09) Landscape Plans***

B28. **Review Criterion:** "Landscape plans shall be submitted showing all existing and proposed landscape areas. Plans must be drawn to scale and show the type, installation size, number and placement of materials. Plans shall include a plant material list. Plants are to be identified by both their scientific and common names. The condition of any existing plants and the proposed method of irrigation are also to be indicated."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Sheets L1.0 and L2.0, of Exhibit B2 provide the required information.

#### ***Subsection 4.176 (.10) Completion of Landscaping***

B29. **Review Criterion:** "The installation of plant materials may be deferred for a period of time specified by the Board or Planning Director acting on an application, in order to avoid hot summer or cold winter periods, or in response to water shortages. In these cases, a temporary permit shall be issued, following the same procedures specified in subsection (.07)(C)(3), above, regarding temporary irrigation systems. No final Certificate of Occupancy shall be granted until an adequate bond or other security is posted for the completion of the landscaping, and the City is given written authorization to enter the property and install the required landscaping, in the event that the required landscaping has not been installed. The form of such written authorization shall be submitted to the City Attorney for review."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The applicant has not requested to defer installation of plant materials.

#### ***Subsection 4.176 (.12) Mitigation and Restoration Plantings***

B30. **Review Criterion:** "A mitigation plan is to be approved by the City's Development Review Board before the destruction, damage, or removal of any existing native plants."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Consistent with the proposed revised Stage II Final Plan, the proposed landscape design involves no removal of existing native plants requiring a mitigation plan pursuant to this subsection.



### **Other Standards**

#### ***Section 4.179 Mixed Solid Waste and Recyclables Storage***

B31. **Review Criterion:** This section establishes standards for mixed solid waste and recyclables storage in new multi-family residential and non-residential buildings.

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The design of the mixed-solid waste and recycling enclosures is not proposed to be changed by this application.

### **Outdoor Lighting**

#### ***Section 4.199.20 Applicability of Outdoor Lighting Standards***

B32. **Review Criterion:** This section states that the outdoor lighting ordinance is applicable to "Installation of new exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas" and "Major additions or modifications (as defined in this Section) to existing exterior lighting systems in public facility, commercial, industrial and multi-family housing projects with common areas." In addition the exempt luminaires and lighting systems are listed.

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Non-exempt new outdoor lighting proposed for the development site is being required to comply with the outdoor lighting ordinance.

#### ***Section 4.199.30 Outdoor Lighting Zones***

B33. **Review Criterion:** "The designated Lighting Zone as indicated on the Lighting Overlay Zone Map for a commercial, industrial, multi-family or public facility parcel or project shall determine the limitations for lighting systems and fixtures as specified in this Ordinance."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The development site is within LZ 2 and the proposed outdoor lighting systems are being reviewed under the standards of this lighting zone.

#### ***Subsection 4.199.40 (.01) A. Alternative Methods of Outdoor Lighting Compliance***

B34. **Review Criterion:** "All outdoor lighting shall comply with either the Prescriptive Option or the Performance Option below."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** The applicant has submitted information to comply with the performance option.

#### ***Subsection 4.199.40 (.01) C. Performance Option for Outdoor Lighting Compliance***

*"If the lighting is to comply with the Performance Option, the proposed lighting design shall be submitted by the applicant for approval by the City meeting all of the following:" Listed 1. through 3.*



***Subsection 4.199.40 (.01) C. 1. Weighted Average of Direct Uplight Lumens Standard***

B35. **Review Criteria:** "The weighted average percentage of direct uplight lumens shall be less than the allowed amount per Table 9."

**Finding:** These criteria are satisfied or will be satisfied by Condition of Approval PDB 8.

**Explanation of Finding:** As shown in the revised sheet SE1.0 provided with the applicant's notebook, Exhibit B1, the only luminaires that are not fully shielded are the landscape bollards. The luminaires are such that the weighted average percentage of direct uplight lumens will be less than five percent (5%). A condition of approval limits all wall mounted fixtures to down lighting.

***Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines***

B36. **Review Criteria:** "The maximum light level at any property line shall be less than the values in Table 9, as evidenced by a complete photometric analysis including horizontal illuminance of the site and vertical illuminance on the plane facing the site up to the mounting height of the luminaire mounted highest above grade."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Sheet SE1.0 shows the horizontal foot candles comply with Table 9. The applicant states on page 18 of their compliance narrative, the vertical foot candles remain substantially the same as previously approved as compliant with Table 9.

***Subsection 4.199.40 (.01) C. 2. Maximum Light Level at Property Lines***

B37. **Review Criteria:** "Luminaires shall not be mounted so as to permit aiming or use in any way other than the manner maintaining the shielding classification required herein:"

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The mountings will be in a downward position. Condition of Approval PDB 8 helps ensure this

***Subsection 4.199.40 (.01) D. Outdoor Lighting Curfew***

B38. **Review Criterion:** "All prescriptive or performance based exterior lighting systems shall be controlled by automatic device(s) or system(s) that:" Listed 1. through 3.

**Finding:** This criterion is satisfied or will be satisfied by Condition of Approval PDB 7.

**Explanation of Finding:** As previously approved, Carl's Jr. is exempt from lighting curfew as a 24/7 operation. However, the coffee kiosk is not. A condition of approval requires lighting associated with this building and supporting parking shall be dimmed at 10:00 p.m. pursuant to Table 10.

***Subsection 4.199.50 Submittal Requirements***

B39. **Review Criteria:** "Applicants shall submit the following information as part of DRB review or administrative review of new commercial, industrial, multi-family or public facility projects:" Listed A. through F. "In addition to the above submittal requirements, Applicants using the Prescriptive Method shall submit the following information as part of the permit set plan review:

A. A site lighting plan (items 1 A - F, above) which indicates for each luminaire the 3 mounting height line to demonstrate compliance with the setback requirements. For luminaires

mounted within 3 mounting heights of the property line the compliance exception or special shielding requirements shall be clearly indicated.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has submitted sufficient information to review the application.



## REQUEST C: DB13-0048 MASTER SIGN PLAN REVISION AND SIGN WAIVER

### *Subsection 4.031 (.01) M. and Subsection 4.156.02 (.07) and (.07) C. Review Process*

- C1. **Review Criteria:** These subsections establish that Master Sign Plans are reviewed by the Development Review Board and that modifications to Master Sign Plans other than minor and major adjustments are reviewed the same as a new Master Sign Plan.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Due to the request for a waiver the request does not qualify as a minor or major adjustment and is therefore being reviewed the same as a new Master Sign Plan.

### *Subsection 4.156.02 (.07) A. Master Sign Plan Submission Requirements*

- C2. **Review Criteria:** This subsection identifies submission requirements for Master Sign Plans

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As indicated in the table below the applicant has either satisfied the submission requirements, or has been granted a waiver under Subsection 4.156.02 (.10).

Requirement	Submitted	Waiver Granted		Condition of Approval	Not Applicable	Additional findings/notes
		Info Already Available to City	Info Not Necessary for Review			
Completed Application Form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sign Drawings or Descriptions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Documentation of Building/Tenant Space Lengths	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Drawings of Sign Placement of Building Facades	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Project Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

***Subsection 4.156.02 (.05) E. Class II Sign Permit Review Criteria: Generally and Site Design Review***

- C3. **Review Criteria:** "Class II Sign Permits shall satisfy the sign regulations for the applicable zoning district and the Site Design Review Criteria in Sections 4.400 through 4.421," Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** As indicated in Findings C25 through C31 these criteria are met.

***Subsection 4.156.02 (.05) E. 1. Class II Sign Permit Review Criteria: Compatibility with Zone***

- C4. **Review Criteria:** "The proposed signage is compatible with developments or uses permitted in the zone in terms of design, materials used, color schemes, proportionality, and location, so that it does not interfere with or detract from the visual appearance of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed signage is typical of and compatible with development within the PDC zones. This includes a design and colors reflecting corporate identity, illuminated channel letters and logo on a raceway, freestanding cabinet signs, and individual non-illuminated letters on an architectural wall. The placement of signs on buildings is in recognizable sign bands, and proportional to the building facades. No evidence exists nor has testimony been received that the subject signs would detract from the visual appearance of the surrounding development.

***Subsection 4.156.02 (.05) E. 2. Class II Sign Permit Review Criteria: Nuisance and Impact on Surrounding Properties***

- C5. **Review Criteria:** "The proposed signage will not create a nuisance or result in a significant reduction in the value or usefulness of surrounding development;" Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** There is no evidence and no testimony has been received that the subject signs would create a nuisance or negatively impact the value of surrounding properties.

***Subsection 4.156.02 (.05) E. 3. Class II Sign Permit Review Criteria: Items for Special Attention***

- C6. **Review Criteria:** "Special attention is paid to the interface between signs and other site elements including building architecture and landscaping, including trees." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The building signs are within an architectural feature identifiable as a sign band with a buffer within the sign band around the sign, which demonstrates consideration of the interface between the signs and building architecture. No sign-tree conflicts have been noted.



***Subsection 4.156.02 (.06) B. Class III Sign Permit Review Criteria***

- C7. **Review Criteria:** "The review criteria for Class II Sign Permits plus waiver or variance criteria when applicable." Pursuant to Subsection 4.156.02 (.07) B. these criteria are also applicable to Master Sign Plans.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** A waiver is being requested and responses to the waiver criteria have been provided.

***Subsection 4.156.02 (.07) B.1. Master Sign Plan Review Criteria: Consistent and Compatible Design***

- C8. **Review Criteria:** "The Master Sign Plan provides for consistent and compatible design of signs throughout the development."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The channel letter/logo design is similar to what was previously approved for the multi-tenant commercial building. The coffee kiosk signs are consistent with the design of the signs approved and installed on the Carl's Jr. building. No additional freestanding signs are proposed. Directional signs are similar in character to the Carl's Jr. directional signs and are typical of drive-thru establishments.

***Subsection 4.156.02 (.07) B.2. Master Sign Plan Review Criteria: Future Needs***

- C9. **Review Criteria:** "The Master Sign Plan considers future needs, including potential different configuration of tenant spaces and different sign designs, if allowed."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Staff recommends increasing the sign allowance to 25.4 square feet on each façade to allow flexibility of sign design over time within a rectangle that the proposed sign fits within.

***Subsection 4.156.02 (.08) A. Sign Waiver***

***Subsection 4.156.02 (.08) A. Waivers in General***

- C10. **Review Criteria:** "The DRB may grant waivers for sign area, sign height from ground (no waiver shall be granted to allow signs to exceed thirty-five (35) feet in height), number of signs, or use of electronic changeable copy signs in order to better implement the purpose and objectives of the sign regulations as determined by making findings that all of the following criteria are met:" Listed 1.-4. See Findings C12 through C15 below.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** A waiver is being requested for sign area consistent with this subsection.

***Subsection 4.156.02 (.08) A. 1. Waivers Criteria: Improved Design***

- C11. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

**Finding:** These criteria are satisfied.



**Explanation of Finding:** The proposed coffee kiosk is a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The waiver allows signs of equal size to be placed on three facades that are of a consistent size and design creating a consistent look for portions of the buildings that are otherwise architecturally similar. The applicant in their narrative requests 15.83 square feet of signage for each of three facades. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends a waiver be approved for the allowed sign area to be increased to 25.4 square feet on the 12.83 long facade.

***Subsection 4.156.02 (.08) A. 2. Waivers Criteria: More Compatible and Complementary***

C12. **Review Criteria:** "The waiver will result in improved sign design, in regards to both aesthetics and functionality."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The waiver will provide for more consistent signs around the building and neighboring buildings providing for compatible and complementary design.

***Subsection 4.156.02 (.08) A .3. Waivers Criteria: Impact on Public Safety***

C13. **Review Criteria:** "The waiver will result in a sign or signs that improve, or at least do not negatively impact, public safety, especially traffic safety."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** If anything, the added readability of the sign facing the intersection will aid drivers in making decisions on maneuvers earlier. No negative impacts on safety have been noted.

***Subsection 4.156.02 (.08) A .4. Waivers Criteria: Content Neutrality***

C14. **Review Criteria:** "Sign content is not being considered when determining whether or not to grant a waiver."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Sign content is not being considered in granting the waiver. Similar consideration on building shape would occur regardless of the tenant or message.

**Section 4.156.03 Sign Measurement**

***Subsection 4.156.03 (.01) B. Measurement of Individual Element Signs***

C15. **Review Criteria:** "The area for signs constructed of individual elements (letters, figures, etc.) attached to a building wall or similar surface or structure shall be the summed area of up to three squares, rectangles, circles, or triangles drawn around all sign elements."

**Finding:** These criteria are satisfied.



**Explanation of Finding:** The proposed signs have not been measured consistent with this subsection. However, as recommended by Staff the proposed Master Sign Plan revision allows for the proposed signs measured according to this subsection.

***Subsection 4.156.03 (.03) A.-B. Measurement of Sign Height and Length***

C16. **Review Criteria:** "Height of a sign is the vertical distance between the lowest and highest points of the sign."

Length of a sign is the horizontal distance between the furthest left and right points of the sign."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed signs have been measured consistent with this subsection.

***Subsection 4.156.08 (.01) L. Design of Sign Based on Initial Tenant Configuration and Size***

C17. **Review Criteria:** "When a sign is designed based on the number of planned tenant spaces it shall remain a legal, conforming sign regardless of the change in the number of tenants or configuration of tenant spaces."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The master sign plan is proposed based on the number of planned tenants, and it is understood the sign plan will be valid regardless on the number of future tenants.

***Subsection 4.156.08 (.02) Building Signs in the PDC, PDI, and PF Zones***

***Subsection 4.156.08 (.02) A. Sign Eligible Facades***

C18. **Review Criteria:** "Building signs are allowed on a facade of a tenant space or single tenant building when one or more of the following criteria are met:

1. The facade has one or more entrances open to the general public;
2. The facade faces a lot line with frontage on a street or private drive with a cross section similar to a public street, and no other buildings on the same lot obstruct the view of the building facade from the street or private drive; or
3. The facade is adjacent to the primary parking area for the building or tenant."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All facades of the proposed coffee kiosk are sign eligible. The north, east, and west face lot lines with frontages of public streets. The south facade faces the primary parking area.



***Subsection 4.156.08 (.02) B. Building Sign Area Allowed***

C19. **Review Criteria:** This subsection includes a table identifying the sign area allowed for facades based on the linear length of the façade. Exception are listed 2. through 5.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** There are no changes to the previously approved sign allowance for the Carl's Jr. building. The following are the allowances for the proposed coffee kiosk.

Coffee Kiosk				
Façade	Linear Length	Sign Area Allowed	Proposed Max	Staff Recommendation
North	12.83 feet	12.83 sf	15.86 sf	25.4 sf
East	34.33 feet	34.33 sf	15.86 sf	25.4 sf
South	12.83 feet	12.83 sf	0 sf	0 sf
West	34.33 feet	34.33 sf	15.86 sf	25.4 sf

The proposed coffee kiosk in a particularly long narrow building at only 12' 10" wide with a length of 35' 4". According to the table showing the sign area allowed in Subsection 4.156.08 (.02) B. 1. the two longer facades would be allowed 35.33 square feet of sign area, and the shorter facade would be allowed 12.83 square feet of sign area. The applicant in their narrative requests 15.83 square feet of signage for each of three facades, which includes a waiver to increase the sign area on the north facade. Staff notes the applicant's method of measurement does not follow the measurement method prescribed in Section 4.156.03. Staff additionally notes greater flexibility for future branding updates or tenant changes would be enabled by requesting a sign area equal to a rectangle drawn around the entire sign. Staff recommends the DRB approve 25.4 square feet on the east, west, and north facades. See also Finding C11 regarding waiver request.

***Subsection 4.156.08 (.02) B. 6. Calculating Linear Length to Determine Sign Area Allowed.***

C20. **Review Criteria:** "For facades of a single tenant building the length the facade measured at the building line, except as noted in a. and b. below. For multi-tenant buildings the width of the façade of the tenant space shall be measured from the centerline of the party walls or the outer extent of the exterior wall at the building line, as applicable, except as noted in a. and b. below. Applicants shall provide the dimensions needed to calculate the length. Each tenant space or single occupant building shall not be considered to have more than five (5) total facades."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has supplied the required measurements used to determine linear lengths according to this subsection.

***Subsection 4.156.08 (.02) C. Building Sign Length Allowed***

C21. **Review Criterion:** "The length of individual tenant signs shall not exceed seventy-five (75) percent of the length of the facade of the tenant space."

**Finding:** This criterion is satisfied.

**Explanation of Finding:** None of the proposed sign bands exceed seventy-five (75) percent of the length of the façade.



***Subsection 4.156.08 (.02) D. Building Sign Height Allowed***

C22. **Review Criteria:** “The height of building signs shall be within a definable sign band, fascia, or architectural feature and allow a definable space between the sign and the top and bottom of the sign band, fascia, or architectural feature.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** All of the proposed sign bands are within a definable architectural feature and have a definable space between the sign and the top and bottom of the architectural feature.

***Subsection 4.156.08 (.02) E. Building Sign Types Allowed***

C23. **Review Criterion:** “Types of signs permitted on buildings include wall flat, fascia, projecting, blade, marquee and awning signs. Roof-top signs are prohibited.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** All the proposed buildings signs are wall flat, which is an allowable type.

***Subsection 4.156.08 (.03) A. Additional Signs: Directional Signs***

C24. **Review Criteria:** “Notwithstanding the signs allowed based on the site in (.01) and (.02) above, the following signs may be permitted, subject to standards and conditions in this Code:” “In addition to exempt directional signs allowed under Subsection 4.156.05 (.02) C. freestanding or ground mounted directional signs six (6) square feet or less in area and four (4) feet or less in height:

1. The signs shall be designed to match or complement the architectural design of buildings on the site;
2. The signs shall only be placed at the intersection of internal circulation drives; and
3. No more than one (1) sign shall be placed per intersection corner with no more than two (2) signs per intersection.”

**Finding:** These criteria are satisfied or will be satisfied by Condition of Approval PDC 3.

**Explanation of Finding:** Two (2) illuminated double faced directional signs are proposed as part of the Master Sign Plan. The signs are shown in the applicant’s sign section of their notebook, Exhibit B1. Exhibit B1 shows the signs slightly larger than 6 square feet. A condition of approval requires they be limited to six (6) square feet. The signs are shown at 4’ tall. The signs match the design of other signs on the property and complement the architecture of the building similarly. The signs are placed at the intersection of internal circulation drives, and only one sign is placed per intersection.

**Site Design Review**

***Subsections 4.400 (.01) and 4.421 (.03) Excessive Uniformity, Inappropriateness of Design, Etc.***

C25. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “Excessive uniformity, inappropriateness or poor design of the exterior appearance of structures and signs and the lack of proper attention to site development and landscaping in the business, commercial, industrial and certain residential areas of the City hinders the harmonious development of the City, impairs the



desirability of residence, investment or occupation in the City, limits the opportunity to attain the optimum use in value and improvements, adversely affects the stability and value of property, produces degeneration of property in such areas and with attendant deterioration of conditions affecting the peace, health and welfare, and destroys a proper relationship between the taxable value of property and the cost of municipal services therefor.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:**

*Excessive Uniformity:* The sign plan allows for a variety of sign shapes, fonts, and colors chosen by different tenants so as to avoid excessive uniformity.

*Inappropriate or Poor Design of Signs:* Signs are typical of the type of development proposed found to be appropriate throughout the City. As issuance of the Class I Sign Permits consistent with the Master Sign Plan the City will ensure quality design of signs.

*Lack of Proper Attention to Site Development:* The appropriate professional services have been used to design the site incorporating unique features of the site including site size and shape, and available access, demonstrating appropriate attention being given to site development and sign placement.

*Lack of Proper Attention to Landscaping:* Landscaping around the monument sign and freestanding sign is consistent with other landscaping on the property and is of an acceptable quality and design.

***Subsections 4.400 (.02) and 4.421 (.03) Purposes of Objectives of Site Design Review***

- C26. **Review Criteria:** “The Board shall also be guided by the purpose of Section 4.400, and such objectives shall serve as additional criteria and standards.” “The City Council declares that the purposes and objectives of site development requirements and the site design review procedure are to:” Listed A through J. including D. which reads “Conserve the City's natural beauty and visual character and charm by assuring that structures, signs and other improvements are properly related to their sites, and to surrounding sites and structures, with due regard to the aesthetic qualities of the natural terrain and landscaping, and that proper attention is given to exterior appearances of structures, signs and other improvements;”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** It is staff's professional opinion that the signs comply with the purposes and objectives of site design review, especially objective D. which specifically mentions signs. The proposed signs are of a scale and design appropriately related to the subject site and the appropriate amount of attention has been given to visual appearance.

***Subsection 4.421 (.01) Site Design Review-Design Standards***

- C27. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Only F. is applicable to this application, which reads, “Advertising Features. In addition to the requirements of the City's sign regulations, the following criteria should be included: the size, location, design, color, texture, lighting and materials of all exterior signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** There is no indication that the size, location, design, color, texture, lighting or material of the proposed signs would detract from the design of the building and the surrounding properties.



***Subsection 4.421 (.02) Applicability of Design Standards to Signs***

C28. **Review Criteria:** “The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures.”

**Finding:** These criteria are satisfied.

**Explanation of Finding:** Design standards have been applied to exterior signs, as applicable, see Finding C27 above.

***Subsection 4.421 (.05) Site Design Review-Conditions of Approval***

C29. **Review Criterion:** “The Board may attach certain development or use conditions in granting an approval that are determined necessary to insure the proper and efficient functioning of the development, consistent with the intent of the Comprehensive Plan, allowed densities and the requirements of this Code.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** No additional conditions of approval are recommended to ensure the proper and efficient functioning of the development.

***Subsection 4.421 (.06) Color or Materials Requirements***

C30. **Review Criterion:** “The Board or Planning Director may require that certain paints or colors of materials be used in approving applications. Such requirements shall only be applied when site development or other land use applications are being reviewed by the City.”

**Finding:** This criterion is satisfied.

**Explanation of Finding:** Staff does not recommend any additional requirements for materials or colors for the proposed signs.

***Section 4.440 Site Design Review-Procedures***

C31. **Review Criteria:** “A prospective applicant for a building or other permit who is subject to site design review shall submit to the Planning Department, in addition to the requirements of Section 4.035, the following:” Listed A through F.

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has submitted a sign plan as required by this section.

**EXHIBIT C1  
PLANNING DIVISION  
STAFF REPORT**

**BOONES FERRY POINTE – HUMAN BEAN COFFEE KIOSK**

**DEVELOPMENT REVIEW BOARD PANEL ‘\_\_\_’  
QUASI JUDICIAL HEARING**

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**Public Hearing Date:**

**Date of Report:**

**Application Numbers:**

**Request A: DB13-0046**

**Request B: DB13-0047**

**Request C: DB13-0048**

**Property**

**Owners/Applicants:**

**PD = Planning Division conditions**

**BD – Building Division Conditions**

**PF = Engineering Conditions.**

**NR = Natural Resources Conditions**

**TR = SMART/Transit Conditions**

**FD = Tualatin Valley Fire and Rescue Conditions**



City of Wilsonville

**EXHIBIT C1 DB13-0046 et seq**



**Specific Comments:**

<b>PF 1.</b>	Engineering Public Facilities Conditions of Approval (PF conditions) for DB12-0074 and DB12-0075 remain in effect for this project except as further modified below.
<b>PF 2.</b>	At the request of Staff, DKS Associates completed a Trip Generation memo dated September 5, 2013 revising a previously completed Carl's Jr. Traffic Impact Study that was completed in May 2012. The proposed use is expected to generate 13 fewer new primary trips than the previously approved use. The project is hereby limited to no more than the following impacts.  Estimated New PM Peak Hour Trips 117
<b>PF 3.</b>	Stormwater detention and storm water quality for this site will be handled via the stormwater facility constructed with the Boones Ferry Pointe project.
<b>PF 4.</b>	The project shall connect to the existing Storm lateral constructed with the Boones Ferry Pointe project.
<b>PF 5.</b>	The project shall connect to the existing Sanitary Sewer stub constructed with the Boones Ferry Pointe project.
<b>PF 6.</b>	The project shall connect to the existing Water service constructed with the Boones Ferry Pointe. project.



# *Development Review Template*

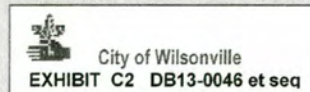
DATE: 12/12/13  
TO: DAN PAULY AICP, ASSOCIATE PLANNER  
FROM: DON WALTERS  
SUBJECT: DEVELOPMENT REVIEW # DB13-46, -47, -48

**WORK DESCRIPTION: NEW HUMAN BEAN DRIVE/WALK-UP COFFEE KIOSK**

\*\*\*\*\*

## **Building Division Conditions:**

BD 1. ACCESSIBLE. At least one of the walk-up service windows shall be accessible.







29799 SW Town Center Loop E  
Wilsonville, Oregon 97070  
(503) 682-1011  
(503) 682-1015 Fax Administration  
(503) 682-7025 Fax Community Development

January 3, 2014

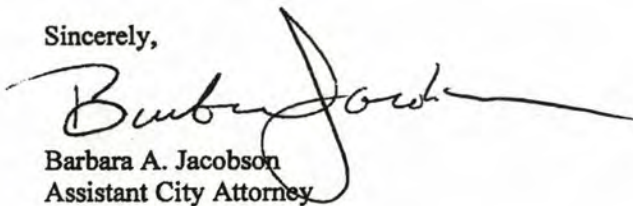
Alec J. Laidlaw  
Laidlaw & Laidlaw  
21590 Willamette Dr  
West Linn OR 97068

**Re: The Human Bean Coffee Store**

Dear Mr. Laidlaw:

The City is in receipt of your letter dated January 3, 2014. Although we appreciate knowing that the dispute exists, it has no bearing on the application made by the property owner to the Wilsonville Development Review Board, which will be considered as scheduled. I trust that if you and your client believe that approval of the application, if granted, will violate a contractual agreement and cause your client harm, you will seek the proper legal recourse with the Washington County Circuit Court before which this matter is being heard, as and when needed to protect your client's interests.

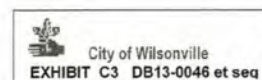
Sincerely,



Barbara A. Jacobson  
Assistant City Attorney

baj:tec

cc: Wallace W. Lien  
Daniel Pauly



"Serving The Community With Pride"

**Pauly, Daniel**

---

**From:** Terra Burns <Terra@laidlawandlaidlaw.com>  
**Sent:** Friday, January 03, 2014 1:55 PM  
**To:** Pauly, Daniel  
**Cc:** Alec Laidlaw; wallace.lien@lienlaw.com; garrylapoint@gmail.com; gl@eoni.com  
**Subject:** Development Review Board Public Hearing- The Human Bean  
**Attachments:** Ltr to DRB re Devco public hearing submittal 2014.01.03.pdf; ORCP 21 Motions 2013.12.27.pdf; Dec of Garry LaPoint in Support 2013.12.30.pdf; UTCR 5.010 CERT OF COMPLAINCE 2013.12.27.pdf

Hello Mr. Pauly—

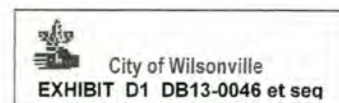
Attached please find the letter and referenced pleadings regarding the Public Hearing set for January 13, 2014 regarding The Human Bean.

Thank you,  
Terra Jane Burns  
Paralegal

Laidlaw & Laidlaw, PC  
21590 Willamette Drive  
West Linn, Oregon 97068  
Tel. 503.305.6894  
Fax. 888.287.4840  
[www.laidlawandlaidlaw.com](http://www.laidlawandlaidlaw.com)  
[Terra@laidlawandlaidlaw.com](mailto:Terra@laidlawandlaidlaw.com)

**Terra Burns is not an attorney and not licensed to practice law. She does not intend to give legal advice to anyone, and no information in this email should be construed as such.**

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January 3, 2014

**BY EMAIL ([pauly@ci.wilsonville.or.us](mailto:pauly@ci.wilsonville.or.us)) AND U.S. MAIL**

Daniel Pauly  
City of Wilsonville  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

**Re:      *The Human Bean Coffee Store***

Our Client:      LaPoint Business Group, LLC; Garry LaPoint  
Case No.:      Washington County Circuit Court – C138125CV

Dear Mr. Pauly:

This firm, along with the law firm of Wallace W. Lien, P.C., represents LaPoint Business Group, LLC. LaPoint Business Group, LLC, is the owner of the adjoining parcel of property, and of the Chevron Fuel Station/Fountain Mart Convenience Store situated thereon.

As you may be aware, there is an action currently pending in Washington County Circuit Court (Case No. C138125CV), between LaPoint Business Group, LLC, and Wilsonville Devco, LLC, ("owner/applicant"). Enclosed herein for your and the Panel's review is a copy of a Motion that was filed yesterday against owner/applicant's complaint. Please note that a full and complete copy of owner/applicant's complaint, filed on December 16, 2013, is marked and attached as Exhibit A to our clients' Motion.

There is a dispute between the parties as to the breadth and scope of a restrictive covenant affecting owner/applicant's property. It is LaPoint Business Group, LLC's, position that the restrictive covenant prohibits the construction of the Human Bean Coffee Store. Owner/applicant believes otherwise.

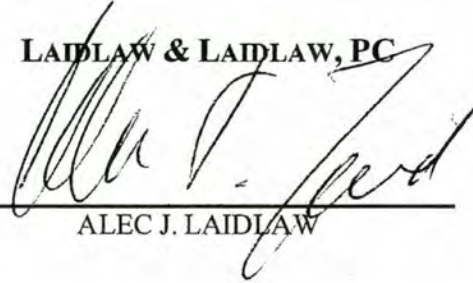
The case pending in Washington County is less than one month old. LaPoint Business Group, LLC, anticipates that this matter will not be resolved without amendment to the pleadings, significant discovery, and perhaps even a trial on the merits. As such, it is LaPoint Business Group, LLC's, position that any consideration of the change proposed by owner/applicant is premature. LaPoint Business Group, LLC, respectfully requests that this matter be setover for further consideration for at least 90 days.

Mr. Lien and/or I plan on appearing at the hearing set for Monday, January 13, 2014. In the meantime, please direct all inquiries regarding this matter to me, at 503.305.6894, or Mr. Lien,

at: Wallace W. Lien PC, 1775 32nd Place NE, Ste. A, Salem, OR 97301; Phone: 503.585.0105;  
Fax: 503.585.0106; Email: wallace.lien@lienlaw.com. Thank you.

Sincerely,

**LIDLAW & LIDLAW, PC**

A handwritten signature in black ink, appearing to read "Alec J. Laidlaw", is written over a horizontal line.

ALEC J. LAIDLAW

Enclosures: Defendant's ORCP 21 Motions (w/ exhibits)

Cc: Wallace W. Lien

LaPoint Business Group, LLC

Garry LaPoint



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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF WASHINGTON  
6

7 WILSONVILLE DEVCO, LLC, and NW  
8 COFFEE GROUP, LLC,

9 Plaintiffs,

10 v.

11 LAPOINT BUSINESS GROUP, LLC and  
12 GARRY LAPOINT,

13 Defendant  
14

) Case No. C138125CV  
)  
)

) **DEFENDANTS' ORCP 21 MOTIONS**  
)

) **Oral Argument Requested**  
)  
)  
)

15 Defendants LaPoint Business Group, LLC, and Garry LaPoint (collectively  
16 "Defendants") move the Court for an Order dismissing Plaintiffs Wilsonville Devco, LLC and  
17 NW Coffee Group, LLC's (collectively "Plaintiffs") Complaint in that it fails to state ultimate  
18 facts sufficient to constitute a claim against Garry LaPoint, pursuant to ORCP 21A(8).  
19 Alternatively, and without waiving the above motion, LaPoint Business Group, LLC, moves the  
20 court for an Order striking Plaintiffs' Complaint, pursuant to ORCP 21E.

21 Official court reporting services are not requested. The estimated time for hearing is 30  
22 minutes.

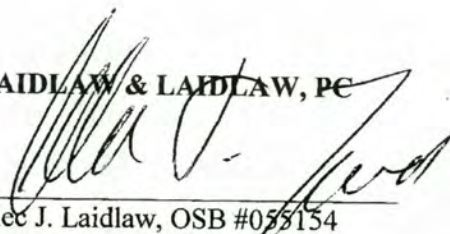
23 Defendants' motions are supported by the attached Memorandum, the Exhibits,  
24 Defendant's counsel's UTCR 5.010 Certificate of Compliance, and the records and file herein.  
25 The portions of the Complaint to be stricken is shown in parentheses, as required by UTCR  
26 5.020, is marked as Exhibit A, is attached hereto, and incorporated herein.

Page 1 – DEFENDANTS' ORCP 21 MOTIONS

LIDLAW & LIDLAW, P.C.  
21590 Willamette Drive  
West Linn, Oregon 97068  
Telephone: 503.305.6894  
Facsimile: 888.287.4840  
58 of 92

1  
2 Dated: December 30, 2013

Laidlaw & Laidlaw, PC

  
Alec J. Laidlaw, OSB #055154  
Jason Janzen, OSB #063790  
Attorneys for Defendants  
alec@laidlawandlaidlaw.com

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Page 2 – DEFENDANTS’ ORCP 21 MOTIONS

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Telephone: 503.305.6894  
Facsimile: 888.287.4840  
59 of 92



1 **MEMORANDUM**

2 **Legal Argument**

3 1. Plaintiffs' Complaint Should Be Dismissed As To Defendant Garry LaPoint Because It  
4 Fails To State Ultimate Facts Sufficient To Constitute A Claim For Relief.

5 ORCP 21 A(8) provides for a motion to dismiss for "failure to state ultimate facts  
6 sufficient to constitute a claim." To survive a motion for failure to state facts constituting a  
7 claim for relief, a complaint must include some allegation of material fact regarding each and  
8 every material element of the claim. *Suess Builders v. City of Beaverton*, 294 Or 254, 656 P2d  
9 306 (1982).

10 The debts, obligations and liabilities of a limited liability company, whether arising in  
11 contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability  
12 company. ORS 63.165(1). A member or a manager of an LLC is not personally liable for any  
13 debt, obligation, or liability of the LLC merely by reason of being a member, a manager, or both.  
14 *Id.*

15 Defendant LaPoint Business Group, LLC ("LaPoint Business Group") is a Limited  
16 Liability Company, duly organized under the laws of the state of Oregon. A copy of the  
17 Business Entity Data, from the Oregon Secretary of State's website, is marked as Exhibit B,  
18 attached hereto, and incorporated herein. LaPoint Business Group is the sole owner of the  
19 property benefitted by the Restrictive Covenant at issue in this matter. A copy of the deed to the  
20 benefitted property is marked as Exhibit C, attached hereto, and incorporated herein.

21 At all times relevant, Defendant Garry LaPoint ("LaPoint") was a member of, and  
22 registered agent for, LaPoint Business Group. He holds no interest in the befitted property in his  
23 *personal capacity*. On these issues there is no factual dispute<sup>1</sup>.

24  
25 <sup>1</sup> See *Complaint for Declaratory Relief*, page 1, line 26 ("Garry LaPoint is a member of and the registered agent for  
26 LaPoint, LLC"); page 2, line 22 ("[t]he Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC").

1 The Complaint contains no ultimate facts which could be construed as sufficiently stating  
2 a claim against Defendant LaPoint, in his personal capacity. The Court should therefore dismiss  
3 any claim(s) against Defendant LaPoint personally.  
4

5 2. Paragraphs 16 Through 21 of The Complaint Are Frivolous And Should Be Stricken.

6 In pertinent part, ORCP 21E provides that the Court may order stricken any frivolous or  
7 irrelevant pleading. A frivolous plea, while true in its allegations, is completely insufficient in  
8 substance. *Andrysek v. Andrysek*, 280 Or 61 (1977). A frivolous plea has been characterized as  
9 not raising any issue in the proceeding. *Kashmir Corp. v. Nelson*, 37 Or App 887 (1978).

10 There is no dispute that a controversy exists between Plaintiffs and Defendant LaPoint  
11 Business Group as to the scope and construction of the Restrictive Covenant. Paragraphs 1  
12 through 15, and 23 through 27 allege as much.

13 Paragraphs 16 through 22 do not raise any issues in this matter. They are repetitive to  
14 Plaintiffs' sole claim for relief: that a dispute exists, between owners of adjoining parcels of real  
15 property, as to the breadth and scope of a Restrictive Covenant, which benefits one parcel, and  
16 burdens the other.

17 Paragraphs 16 through 22 add nothing to the Complaint, save for volume of text. They  
18 should therefore be stricken.

19 **Conclusion**

20 Defendant LaPoint's only connection to this matter is his status as a member and  
21 registered agent of LaPoint Business Group. Plaintiffs' Complaint states no ultimate facts  
22 sufficient to constitute a claim against Defendant LaPoint. Plaintiffs' claim against Defendant  
23 LaPoint therefore fails as a matter of law.

24 //

25 //

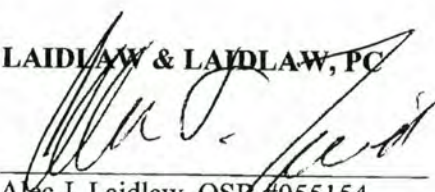
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1       Alternatively, and without waiving the foregoing motion to dismiss, the Court should  
2 strike paragraphs 16 through 21 of the Complaint in that they are frivolous and raise no issues in  
3 this case.

4  
5       Dated: December 30, 2013

**LAIDLAW & LAIDLAW, PC**



Alec J. Laidlaw, OSB #055154  
Jason Janzen, OSB #063790  
Attorneys for Defendants  
alec@laidlawandlaidlaw.com

COPY

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ID: 09

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF WASHINGTON

WILSONVILLE DEVCO, LLC, and NW  
COFFEE GROUP, LLC,

Plaintiffs,

v.

LAPOINT BUSINESS GROUP, LLC; and  
GARRY LAPOINT,

Defendants.

Case No. ~~213010154~~ C/381250

COMPLAINT FOR DECLARATORY  
RELIEF (ORS 28.010 *ET SEQ.*)

CASE NOT SUBJECT TO MANDATORY  
ARBITRATION

Plaintiffs Wilsonville Devco, LLC ("Wilsonville Devco") and NW Coffee Group, LLC  
("NW Coffee"), allege as follows:

Parties

1.

Plaintiff Wilsonville Devco is a limited liability company incorporated in the state of  
Oregon.

2.

Plaintiff NW Coffee is a limited liability company incorporated in the state of Oregon.

3.

Defendant LaPoint Business Group, LLC ("LaPoint, LLC") is a limited liability company  
incorporated in the state of Oregon.

4.

Defendant Garry LaPoint is an individual residing, upon information and belief, in the  
state of Oregon. Garry LaPoint is a member of and the registered agent for LaPoint, LLC.

Page 1 - COMPLAINT FOR DECLARATORY RELIEF

HOLLAND & KNIGHT LLP  
111 S.W. Fifth Avenue  
2300 U.S. Bancorp Tower  
Portland, Oregon 97204  
Telephone: 503.243.2300

#26839050 v1

COPY

EXHIBIT A  
PAGE 1



**Facts**

5.

Wilsonville Devco owns a parcel of land in the City of Wilsonville, County of Washington, and state of Oregon (the "Property"). The Property's legal description is fully set forth in Exhibit A, which is incorporated here by reference.

6.

The Property is subject to a restrictive covenant recorded in the Washington County property records on March 10, 2005 under recording number 2005-025345 (the "Restrictive Covenant"). The Restrictive Covenant provides that the Property

... shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

The Restrictive Covenant is fully set forth in Exhibit B, which is incorporated here by reference.

7.

The Restrictive Covenant was executed on or about March 8, 2005 by South Sea, LLC. The Restrictive Covenant states that it is binding upon South Sea, LLC, its successors and assigns forever.

8.

On or about May 24, 2012, Wilsonville Devco purchased the Property from South Sea, LLC. Wilsonville Devco is the current owner of the Property.

9.

The Restrictive Covenant benefits a neighboring parcel owned by LaPoint, LLC. LaPoint, LLC and Garry LaPoint operate a Chevron gasoline station and Fountain Mart convenience store on the benefitted parcel.

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Wilsonville Devco and NW Coffee have begun the process of constructing The Human Bean coffee restaurant on the Property. The Human Bean coffee restaurant is a drive-through coffee shop that primarily sells different kinds of coffee drinks, as well as tea, frozen drinks, and bottled water.

11.

Wilsonville Devco has fully negotiated the terms of a build to suit lease agreement with NW Coffee. The build to suit lease agreement contemplates that Wilsonville Devco will construct and NW Coffee will operate The Human Bean coffee restaurant upon a portion of the Property.

12.

NW Coffee has fully negotiated a franchise agreement under which NW Coffee will operate The Human Bean coffee restaurant on the Property.

13.

Wilsonville Devco has completed and submitted its project submittal for construction of The Human Bean coffee restaurant on the Property to the City of Wilsonville. The submittal is complete and is scheduled for public hearing on January 13, 2014.

14.

Wilsonville Devco has expended approximately \$80,000 to date in site work improvements in preparation for construction of The Human Bean coffee restaurant on the Property. The project is expected to be complete and the restaurant open in April 2014.

15.

LaPoint, LLC and Garry LaPoint have asserted that the development and operation of The Human Bean coffee restaurant on the Property is prohibited by the Restrictive Covenant.

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16.

(On or about November 19, 2013, Garry LaPoint's counsel sent a letter to Josh Veentjer, who is Wilsonville Devco's managing member, asserting that the development and operation of The Human Bean coffee restaurant violates the Restrictive Covenant (the "November 19, 2013 Letter"). The November 19, 2013 Letter is fully set forth in Exhibit C, which is incorporated here by reference.)

17.

(The November 19, 2013 Letter asserted that the Restrictive Covenant prohibits the Property from being used to sell any products normally sold in a convenience store, including coffee.)

18.

(The November 19, 2013 Letter demanded that Wilsonville Devco "immediately CEASE and DESIST all activities relative to the siting and construction of The Human Bean facility on [the Property].")

19.

(On or about November 27, 2013, Wilsonville Devco's counsel sent a letter to Garry LaPoint's counsel explaining that under Oregon law, the Restrictive Covenant's language does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's November 27, 2013 letter is fully set forth in Exhibit D, which is incorporated here by reference.)

20.

(On or about December 10, 2013, Wilsonville Devco's counsel sent an email to Garry LaPoint's counsel again explaining that the Restrictive Covenant does not bar development and operation of The Human Bean coffee restaurant on the Property. Wilsonville Devco's counsel's December 10, 2013 email is fully set forth in Exhibit E, which is incorporated here by reference.)  
///

HOLLAND & KNIGHT LLP  
111 S.W. Fifth Avenue  
2300 U.S. Bancorp Tower  
Portland, Oregon 97204  
Telephone: 503.243.2300

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21.

(On or about December 10, 2013, Garry LaPoint's counsel sent an email responding to Wilsonville Devco's counsel and stating his client's intention to enforce the Restrictive Covenant in court. Garry LaPoint's counsel's December 10, 2013 email is fully set forth in Exhibit F, which is incorporated here by reference.)

**Claim for Declaratory Relief**

22.

Plaintiffs incorporate by reference and reallege paragraphs 1-21 above.

23.

Wilsonville Devco and NW Coffee claim that the Restrictive Covenant does not prevent development and operation of The Human Bean coffee restaurant on the Property.

24.

LaPoint, LLC and Garry LaPoint claim that the Restrictive Covenant prevents development and operation of The Human Bean coffee restaurant on the Property.

25.

Development of The Human Bean coffee restaurant on the Property is underway. The agreements necessary to develop and operate The Human Bean coffee restaurant on the Property have been fully negotiated. The necessary approval process with the City of Wilsonville is also near completion. Preliminary site work improvements are also ongoing.

26.

The dispute between Plaintiffs and Defendants regarding the effect of the Restrictive Covenant upon development and operation of The Human Bean coffee restaurant on the Property is an actual and substantial controversy between parties with adverse interests, and arises from present facts. The dispute is accordingly appropriate for judicial disposition and resolution by binding decree.

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27.

The Court is specifically authorized under Oregon law to declare the parties' rights, status, and other legal relations under the Restrictive Covenant. ORS 28.020 provides, in part:

Any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under any such . . . contract . . . and obtain a declaration of rights status or other legal relations thereunder.

WHEREFORE, Plaintiffs Wilsonville Devco and NW Coffee request the following relief:

1. Judgment declaring that the Restrictive Covenant does not prohibit the development or operation of The Human Bean coffee restaurant on the Property;
2. Plaintiffs' costs and disbursements incurred in this action; and
3. Any other relief that the Court deems just and proper.

DATED this 6<sup>th</sup> day of December, 2013.

HOLLAND & KNIGHT LLP

By:

  
Louis A. Santiago, OSB # 783610  
E-mail: louis.santiago@hklaw.com  
Garrett S. Garfield, OSB # 093634  
E-mail: garrett.garfield@hklaw.com  
111 SW Fifth Avenue  
2300 U.S. Bancorp Tower  
Portland, Oregon 97204  
Telephone: 503.243.2300  
Fax: 503.241.8014

Attorneys for Plaintiffs Wilsonville Devco, LLC and NW Coffee Group, LLC

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31 at Page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel 1 as described in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document No. 95-027728, recorded April 21, 1995 (hereinafter referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence continuing North 00°09'24" East along said Easterly line, 341.16 feet; thence along the arc of a 116.16 foot radius curve to the right, through a central angle of 48°43'29", an arc length of 98.78 feet, the chord of which bears North 24°31'08" East, 95.83 feet; thence along the arc of a 45.00 foot radius curve to the right, through a central angle of 67°23'57", an arc length of 52.94 feet, the chord of which bears North 82°35'16" East 49.94 feet; thence along the arc of a 100.00 foot radius curve to the right, through a central angle of 37°13'18", an arc length of 64.96 feet, the chord of which bears South 45°05'58" East, 63.03 feet to a point on the Westerly line of Doones Ferry Road as described in said "ODOT" Deed; thence along the said Westerly line along the arc of a tangent 595.65 foot radius reverse curve to the left, the radius bears North 63°30'41" East, through a central angle of 02°45'38", an arc length of 28.70 feet, the chord of which bears South 27°52'08" East 28.70 feet; thence non-tangent South 15°09'35" West 83.41 feet; thence South 38°02'13" East, 122.78 feet; thence leaving said Westerly line, South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point that is 18.00 feet measured at right angles from the South line of said Lot 7; thence parallel to said South line of Lot 7, South 89°38'33" West 121.22 feet to the true point of beginning.

EXCEPTING THEREFROM that portion thereof conveyed to the City of Wilsonville for right-of-way purposes in Warranty Deed recorded November 23, 2009 as Fee No. 2009-102082, Washington County Deed Records.

#25841631 v1

EXHIBIT A  
Page 1 of 1

EXHIBIT A  
PAGE 1



Washington County, Oregon 2005-025345

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G-R/B Cnt=1 Bwn# A DUYCK  
\$26.00 \$6.00 \$11.00 - Total = \$43.00



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I, Jerry H. Hays, Director of Assessment and Taxation  
and Washington County Clerk for Washington County,  
Oregon, do hereby certify that the within instrument of  
conveyance is a true and correct copy of the original  
instrument of said county.  
Jerry H. Hays, Director of Assessment and Taxation  
Washington County Clerk



**AFTER RECORDING MAIL TO:**

Name Garry M. LaPoint  
Address 10618 Crosby Road NE  
City/State Woodburn, OR 97071

Document Title(s) (for transactions contained therein):  
1. Restrictive Covenant

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FARCO NLS NLS-M4677-OR

Title Data, Inc. CH POM10593 W# 2005025345.001

EXHIBIT B  
Page 1 of 4

EXHIBIT  
PAGE

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# RESTRICTIVE COVENANT

FOR GOOD AND VALUABLE CONSIDERATION, the undersigned, hereby creates and imposes upon the real property described in Exhibit A attached hereto and by this reference made a part hereof, to be binding upon itself, its successors and assigns forever, the following restriction on use of the property:

The property described in Exhibit A attached hereto and by this reference, incorporated herein, shall not be used at any time to dispense petroleum products or any type of energy products that is used by the public for transportation. The sale of gasoline type products, diesel fuel(s), propane, natural gas, air or compressed air, or related products is strictly prohibited as is the operation of a convenience store business.

IN WITNESS WHEREOF, the undersigned, being the owner of the real property described above, has executed this restrictive covenant on the 8<sup>th</sup> day of March, 2005.

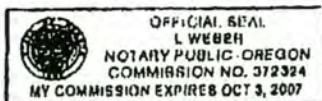
SOUTH SEA, LLC, an Oregon Limited Liability Company

BY George F. Brice III  
George F. Brice III, Member

BY Zsuzsanna Brice  
Zsuzsanna Brice, Member

STATE OF OREGON            )  
County of Multnomah        )    "

Before me, a notary public in and for the State of Oregon, personally appeared George F. Brice, III and Zsuzsanna Brice and acknowledged the foregoing to be their voluntary act and deed.



[Signature]  
Notary Public for Oregon  
My commission expires: 10/3/07



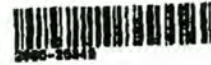


EXHIBIT A

LEGAL DESCRIPTION:

PARCEL 1:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South 89°38'33" West, along the South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 341.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'16" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to Exon Wilsonville, LLC, an Oregon limited liability company, by Instrument recorded June 19, 2000 as Fee No. 2000-48397 and being more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

File Data, Inc. CH POR10583 W# 2008026345.003

EXHIBIT B  
Page 3 of 4

EXHIBIT A  
PAGE 10



Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South  $89^{\circ}38'33''$  West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North  $00^{\circ}09'24''$  East parallel to said East line, 18.00 feet to the true point of beginning; thence North  $89^{\circ}38'33''$  East parallel to said South line of Lot 7, 95.10 feet; thence South  $20^{\circ}29'49''$  West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South  $89^{\circ}38'33''$  West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North  $00^{\circ}09'24''$  East parallel to said East line, 6.00 feet to the true point of beginning.

**PARCEL II:**

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 21, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South  $89^{\circ}38'33''$  West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North  $00^{\circ}09'24''$  East parallel to said East line, 18.00 feet; thence North  $89^{\circ}38'33''$  East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North  $20^{\circ}29'49''$  East, 170.00 feet; thence North  $57^{\circ}57'47''$  East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South  $38^{\circ}02'13''$  East, 2.34 feet; thence leaving said Westerly line South  $51^{\circ}57'47''$  West, 20.00 feet; thence South  $20^{\circ}40'49''$  West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South  $89^{\circ}38'33''$  West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

Title Data, Inc. CH POR10593 WN 2008025345.004

EXHIBIT B  
Page 4 of 4

EXHIBIT A  
PAGE 11



WALLACE W. LIEN

A PROFESSIONAL CORPORATION



Wallace W. Lien

Attorney at Law

Contact by e-mail at  
wallace.lien@lienlaw.com

November 19, 2013

Mr. Josh Veentjer  
President  
Pacific Development Ventures  
P. O. Box 6437  
La Quinta, CA 92248

By Certified Mail No. 7012 1010 0000 0856 6155  
Return Receipt Requested  
Copy by Regular Mail

Re: Wilsonville Proposed Human Bean Coffee Shop

Dear Mr. Veentjer:

Please be advised that I represent Garry LaPoint, and his Chevron station and Fountain Mart. Mr. LaPoint has been advised that it is your intention to construct a Human Bean Coffee Shop with drive through, which would serve all kinds of coffee drinks, fountain drinks, bottled water, frozen drinks, fruit and baked goods among other convenience food products.

You should be advised that when Mr. LaPoint sold your property to George Brice (South Sea LLC) a Restrictive Covenant was imposed on the property you now own that strictly prohibits your property from being used for the sale of any products that would normally occur in a convenience store business. All of the products that are proposed to be sold at this Human Bean location are products that are currently for sale in Mr. LaPoint's Fountain Mart.

This Restrictive Covenant was recorded as Document No. 2005-025345, on March 12, 2005, and it binds successors to Brice/South Sea, such as yourself. Documents related to the creation of the Restrictive Covenant clearly show the intent was to prohibit anything that competes with my client's Fountain Mart. My client believes strongly that your proposed Human Bean facility will be in direct competition with his Fountain Mart, and therefore is prohibited by the Restrictive Covenant.

You should immediately CEASE and DESIST all activities relative to the siting and construction of the Human Bean facility on the property subject to the above-referenced Restrictive Covenant. This must include the immediate withdrawal of any permit applications with the City of Wilsonville.

This is a serious matter for my client, as a large portion of the revenue for the Fountain Mart comes from the sale of products your proposed Human Bean would be offering. In the event you do not CEASE and DESIST, and provide evidence to my office by the close of business on November 29, 2013 that you have done so, I will assume that you intend to violate the Restrictive Covenant, and I will file a Complaint in Clackamas County Circuit Court to obtain an injunction to enforce the prohibitions in the covenant.

1.75 32nd Place NE, Suite A • Salem, Oregon 97301-8774

(503) 585-0103 office • (503) 585-0106 fax

Web site at <http://www.lienlaw.com>

EXHIBIT C  
Page 1 of 2

EXHIBIT A  
PAGE 12

Mr. Josh Veentjer

November 19, 2013

Page 2

If you are represented by legal counsel, please refer this letter to your attorney and have that attorney contact me with any questions.

Otherwise, I will expect to hear from you by November 29, 2013, that you have taken all steps necessary to come into compliance with the Restrictive Covenant.

Yours truly,

WALLACE W. LIEN, P.C.

**/s/ Wallace W. Lien**

By: Wallace W. Lien

cc: Garry LaPoint  
Daniel Pauly, City of Wilsonville ✓  
Josh Veentjer (Copy by Regular Mail)

EXHIBIT C  
Page 2 of 2



# Holland & Knight

111 E.W. Fifth Avenue, 33001 S. Bancroft Tower, Portland, OR 97204 | 503.243.2000 | F 503.243.4014  
Holland & Knight LLP | [www.hk-law.com](http://www.hk-law.com)

November 27, 2013

GEORGE J. GREGORES  
503.243.5879  
[george.gregores@hkllaw.com](mailto:george.gregores@hkllaw.com)

[Wallace.lien@lienlaw.com](mailto:Wallace.lien@lienlaw.com)

Wallace W. Lien  
Attorney at Law  
1773 32<sup>nd</sup> Place SE, Suite A  
Salem, Oregon 97301-8774

Re: Our Client: Wilsonville Devco, LLC

Dear Mr. Lien:

This firm represents Wilsonville Devco, LLC, the owner of the real property and improvements located adjacent to Mr. LaPoint's Chevron gas station and Fountain Mart in Wilsonville, Oregon. I am in receipt of your November 19, 2013 letter directed to Josh Veentjer of Pacific Development Ventures in which you reference the Restrictive Covenant recorded as Document No. 2005-025345 against the Wilsonville Devco property. You contend in your letter to Mr. Veentjer that operation of a Human Bean Coffee restaurant on the Wilsonville Devco property is prohibited by the Restrictive Covenant. We believe that you have engaged in a tortured analysis to reach this conclusion, and in connection therewith, seek to expand the scope of the restriction well beyond the clear text of the provision.

You state in the second paragraph of your November 19 letter that the Restrictive Covenant strictly prohibits the Wilsonville Devco property "from being used for the sale of any products that would normally occur in a convenience store business." The Restrictive Covenant prohibits "the operation of a convenience store business" only, not the sale of products that are sold in a convenience store as you suggest. The only way to construe the Restrictive Covenant as you contend would require reading into the provision language that simply does not exist in the recorded document, something a court will not do. There is no ambiguity in the text of the covenant, the language is clear. In the case of a restrictive covenant, the appropriate maxim of construction provides that the covenant is to be construed strictly against the restriction. Unless the use complained of is plainly within the provisions of the covenant, it will not be restrained. Yogman v. Parrot, 325 Or 358 (1997). In analyzing contractual language, a court is "to ascertain and declare what is, in terms or in substance, contained therein, not to omit what has been inserted."

The dictionary definition of "convenience store" is a small retail store that stocks a range of everyday items such as groceries, toiletries, alcoholic and soft drinks, tobacco products,

EXHIBIT D  
Page 1 of 2

November 27, 2013  
Page 2

newspapers and sometimes gasoline. The fact that a few of the products sold in your client's convenience store will also be sold in the Human Bean Coffee restaurant doesn't fall within the prohibition of the Restrictive Covenant. The operation of a Human Bean Coffee restaurant is not the "operation of a convenience store business."

Our client intends to proceed with the leasing of the property to the operator of the Human Bean Coffee restaurant and respectfully rejects your request that it cease and desist all activities in that regard. With respect to your threat of litigation, please be advised that we have been instructed to vigorously defend any claims that you bring on behalf of your client under the Restrictive Covenant. In that regard, given the clear and unambiguous language of the Restrictive Covenant and the law applicable to it, we would view the filing of any claim as spurious and will respond appropriately.

If you have any questions or wish to discuss this matter further, please advise.

Very truly yours,

HOLLAND & KNIGHT LLP

George J. Oregores

#26639028 v1

EXHIBIT D  
Page 2 of 2

EXHIBIT A  
PAGE 15



**Gregores, George J (POR - X55879)**

---

To: wallace.lien@lienlaw.com  
Cc: josh@pdvco.com  
Subject: Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arlas Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

In your November 19 letter to Mr. Veentjer, you threaten the filing of a Complaint in Clackamas County Circuit Court to obtain an Injunction to enforce the Covenant. Hopefully, my November 27 letter and a review of the applicable case law has convinced you and your client that your legal position is not sustainable. Please advise what you intend to do in this matter. In that regard, we are requesting that you confirm in writing that Mr. LaPoint does not intend to assert any claim against Wilsonville Devco, LLC, the owner of the property subject to the Restrictive Covenant, or against the franchisee, that the operation of a Human Bean coffee restaurant violates the Restrictive Covenant. Unless we can obtain reasonable assurance from your client in that regard, we will be forced to file a suit for Declaratory Relief in Washington County Circuit Court, which will result in significant expense to both parties.

I would be happy to discuss this matter with you as well.

George Gregores (Hofmann & Knight)

Partner

2000 N.E. Portland, Oregon 97115-1100 (503) 255-4724

Mobile: 503-943-5521 Fax: 503-255-6014

ggregores@hofmannknight.com

www.hofmannknight.com

EXHIBIT E  
Page 1 of 1

EXHIBIT A  
PAGE 16

**Gregores, George J (POR - X55879)**

---

**From:** Wallace Lien [W.Lien@lienlaw.com]  
**Sent:** Tuesday, December 10, 2013 2:30 PM  
**To:** Gregores, George J (POR - X55879)  
**Cc:** Wallace Lien  
**Subject:** RE: Our Client: Wilsonville Devco, LLC

It is our intention to enforce the covenant in court. Are you authorized to accept service?

**Wallace W. Lien**  
Wallace W. Lien, P.C.  
1775 32nd Place NE, Suite A  
Salem, OR 97301-8774  
phone: 503-585-0105 ext. 311  
fax: 503-585-0108  
<http://www.lienlaw.com>

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**From:** George.Gregores@hklaw.com [mailto:George.Gregores@hklaw.com]  
**Sent:** Tuesday, December 10, 2013 2:25 PM  
**To:** Wallace Lien  
**Cc:** josh@pdvco.com; louis.santiago@hklaw.com  
**Subject:** Our Client: Wilsonville Devco, LLC

Mr. Lien: This email is a follow up to my letter to your attention dated November 27, 2013, responding to your November 19, 2013 letter to Josh Veentjer regarding the Restrictive Covenant No. 2005-025345 recorded March 12, 2005 (the "Restrictive Covenant"). As stated in my November 27 letter, my clients intend to proceed with the development of the Human Bean Coffee restaurant on the Wilsonville Devco, LLC property subject to the Restrictive Covenant despite your client's objection in that regard. As I indicated previously, we see no merit in your argument that the operation of a franchised coffee restaurant would violate the Restrictive Covenant under applicable Oregon law (Yogman vs. Parrot). I would also suggest that you review Rawald v. Murgulla & Arias Grocery, LLC, 2013 WL 5716531, a 2013 case directly on point which supports our position.

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I would be happy to discuss this matter with you as well.

EXHIBIT F  
Page 1 of 1



**Gregores, George J (POR - X55879)**

**From:** Wallace Lien [W.Lien@lienlaw.com]  
**Sent:** Tuesday, December 10, 2013 2:30 PM  
**To:** Gregores, George J (POR - X55879)  
**Cc:** Wallace Lien  
**Subject:** RE: Our Client: Wilsonville Devco, LLC

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**Wallace W. Lien**  
Wallace W. Lien, P.C.  
1775 32nd Place NE, Suite A  
Salem, OR 97301-8774  
phone: 503-585-0105 ext. 311  
fax: 503-585-0108  
<http://www.lienlaw.com>

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**Sent:** Tuesday, December 10, 2013 2:25 PM  
**To:** Wallace Lien  
**Cc:** josh@pdvco.com; louis.santolugo@hklaw.com  
**Subject:** Our Client: Wilsonville Devco, LLC

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I would be happy to discuss this matter with you as well.

EXHIBIT F  
Page 1 of 1

HOME

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referral list business registry/renewal forms/fees notary public

uniform commercial code uniform commercial code search documents & data services

**Business Name Search**New Search Printer Friendly**Business Entity Data**

01-02-2014

11:57

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
628887-80	DLLC	ACT	OREGON	04-16-1998	04-16-2014	
Entity Name LAPOINT BUSINESS GROUP, LLC						
Foreign Name						

New Search Printer Friendly**Associated Names**

Type	PPB	PRINCIPAL PLACE OF BUSINESS		
Addr 1	25410 SW 95TH			
Addr 2				
CSZ	WILSONVILLE	OR	97070	Country UNITED STATES OF AMERICA

Please click here for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	04-16-1998	Resign Date	
Name	GARRY	L	LAPOINT			
Addr 1	850 LAWSON AVE					
Addr 2						
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS		
Addr 1	10618 CROSBY RD			
Addr 2				
CSZ	WOODBURN	OR	97071	Country UNITED STATES OF AMERICA

Type	MEM	MEMBER		Resign Date	
Name	KATHERINE	M	LAPOINT		
Addr 1	10618 CROSBY RD				
Addr 2					
CSZ	WOODBURN	OR	97071	Country	UNITED STATES OF AMERICA





<b>Type</b>	MEM	MEMBER			<b>Resign Date</b>	
<b>Name</b>	GARRY	L	LAPOINT			
<b>Addr 1</b>	10618 CROSBY RD					
<b>Addr 2</b>						
<b>CSZ</b>	WOODBURN	OR	97071		<b>Country</b>	UNITED STATES OF AMERICA

[New Search](#)   [Printer Friendly](#)   **Name History**

<b>Business Entity Name</b>	<b>Name Type</b>	<b>Name Status</b>	<b>Start Date</b>	<b>End Date</b>
LAPOINT BUSINESS GROUP, LLC	EN	CUR	04-16-1998	

Please read before ordering Copies.

[New Search](#)   [Printer Friendly](#)   **Summary History**

<b>Image Available</b>	<b>Action</b>	<b>Transaction Date</b>	<b>Effective Date</b>	<b>Status</b>	<b>Name/Agent Change</b>	<b>Dissolved By</b>
	AMENDED ANNUAL REPORT	03-15-2013		FI		
	AMENDED ANNUAL REPORT	03-07-2012		FI		
	ANNUAL REPORT PAYMENT	03-04-2011		SYS		
	ANNUAL REPORT PAYMENT	03-05-2010	03-04-2010	SYS		
	ANNUAL REPORT PAYMENT	03-23-2009		SYS		
	ANNUAL REPORT PAYMENT	03-19-2008		SYS		
	ANNUAL REPORT PAYMENT	03-08-2007		SYS		
	AMNDMT TO ANNUAL RPT/INFO STATEMENT	05-10-2006		FI		
	ANNUAL REPORT PAYMENT	05-04-2006	05-03-2006	SYS		
	NOTICE LATE ANNUAL	04-21-2006		SYS		
	ANNUAL REPORT PAYMENT	03-11-2005		SYS		

EXHIBIT

B

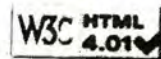
PAGE

2

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	NOTICE LATE ANNUAL	04-23-2004		SYS		
	ANNUAL REPORT PAYMENT	04-17-2003		SYS		
	ANNUAL REPORT PAYMENT	04-12-2002		SYS		
	ANNUAL REPORT PAYMENT	04-19-2001		SYS		
	STRAIGHT RENEWAL	04-14-2000		FI		
	AMENDED RENEWAL	04-14-1999		FI		
	NEW FILING	04-16-1998		FI		

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please contact : [corporation.division@state.or.us](mailto:corporation.division@state.or.us)



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EXHIBIT B  
PAGE 3



25  
12/1/05  
12/1/05

Washington County, Oregon 2005-140371  
11/09/2005 10:44:56 AM  
D-DBB Cnt=1 Stn=7 K GRUNEWALD  
\$25.00 \$0.00 \$11.00 - Total = \$42.00



00864899200501403710050051

I, Jerry Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Jerry Hanson  
Jerry R. Hanson, Director of Assessment and Taxation, Ex-Officio County Clerk



**RECORD AND RETURN TO:**

Garry and Kathy LaPoint  
LaPoint Business Group, LLC  
10618 Crosby Rd. NE  
Woodburn, OR 97071

**UNTIL A CHANGE IS REQUESTED ALL TAX STATEMENTS SHALL BE SENT TO:**

No Change

**BARGAIN AND SALE DEED**

Exxon of Wilsonville, LLC, an Oregon limited liability company, Grantor, conveys to LaPoint Business Group, LLC, an Oregon limited liability company, Grantee, the following real property situated in Washington County, Oregon and described on the attached Exhibit "A."

The true consideration for this conveyance is \$0.00. However, the actual consideration consists of other value given which is the whole consideration.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 4 day of November, 2005.

**EXXON OF WILSONVILLE, LLC**

**BY: Garry L. LaPoint, Member**

**BY: Katherine M. LaPoint, Member**

FDX 1349506v1 0-0  
Portland



STATE OF OREGON )

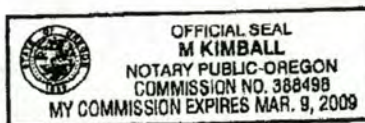
County of Multnomah ) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Garry L. LaPoint, as a member of Exxon of Wilsonville, LLC..

M Kimball

Notary Public for Oregon

My Commission Expires: 3/9/09



STATE OF OREGON )

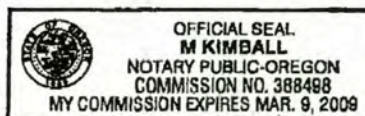
County of Multnomah ) ss.

This instrument was acknowledged before me on this 4 day of November, 2005, by Katherine M. LaPoint, as a member of Exxon of Wilsonville, LLC.

M Kimball

Notary Public for Oregon

My Commission Expires: 3/9/09







## EXHIBIT A

### PARCEL I:

A parcel of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South  $89^{\circ}38'33''$  West, along the South line of said lot, a distance of 391.33 feet to the East line of Parcel I in Deed from John Q. Hammons, to the State of Oregon, by and through its Department of Transportation (herein after referred to as "ODOT"); thence North  $00^{\circ}09'24''$  East, along said "ODOT" Deed, a distance of 359.27 feet; thence continuing along said "ODOT" Deed, along the arc of a curve to the right, said curve having a radius of 128.16 feet, arc length of 140.62 feet, central angle of  $062^{\circ}51'50''$ , a chord bearing of North  $31^{\circ}35'19''$  East, a chord length of 133.67 feet to the intersection with the South line of SW Commerce Circle as dedicated in the plat of EDWARDS BUSINESS INDUSTRIAL PARK; thence non-tangent North  $70^{\circ}34'24''$  East, along said street, a distance of 20.97 feet, and along the arc of a curve to the right, said curve having a radius 25.00 feet, arc length of 32.72 feet, central angle of  $074^{\circ}59'06''$ , a chord bearing of South  $71^{\circ}56'03''$  East, and a chord length of 30.43 feet to the intersection with the West line of Boones Ferry as described in said "ODOT" Deed; thence along said "ODOT" Deed, along the arc of a non-tangent curve to the left, said curve having a radius of 1,001.93 feet, arc length of 12.00 feet, central angle of  $000^{\circ}41'10''$ , a chord bearing of South  $24^{\circ}13'24''$  East, and a chord length of 12.00 feet to the intersection with the East line of said Lot 7; thence along the East line of said Lot 7, along the arc of a non-tangent curve to the left, said curve having a radius of 595.65 feet, arc length of 85.44 feet, central angle of  $008^{\circ}13'06''$ , a chord bearing of South  $25^{\circ}08'24''$  East, and a chord length of 85.36 feet to Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence non-tangent, along said Westerly line South  $15^{\circ}09'35''$  West, a distance of 83.41 feet, South  $38^{\circ}02'13''$  East, a distance of 200.44 feet, North  $46^{\circ}33'47''$  East, a distance of 48.10 feet, South  $40^{\circ}56'40''$  East, a distance of 81.06 feet, and along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 17.49 feet, central angle of  $00^{\circ}21'11''$ , a chord bearing of South  $38^{\circ}36'45''$  East, and a chord length of 17.49 feet to a point 100.00 feet North of, when measured at right angle to, the South line of said Lot 7; thence continuing along said "ODOT" Deed, along the arc of a non-tangent curve to the right, said curve having a radius of 2,837.79 feet, arc length of 48.51 feet, central angle of  $00^{\circ}58'46''$ , a chord bearing of South  $37^{\circ}56'47''$  East, and a chord length of 48.51 feet, to the East line of said Lot 7; thence along the arc of a curve to the left, said curve having a radius of 116.96 feet, arc length of 62.30 feet, central angle of  $030^{\circ}31'07''$ , a chord bearing of South  $00^{\circ}03'01''$  West, and a chord length of 61.56 feet to the point of beginning.

EXCEPTING THEREFROM a tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the South one-half Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7; thence South  $89^{\circ}38'33''$  West, along the





South line of said lot, a distance of 379.33 feet to a point 12 feet Easterly of the East line of Parcel 1 in Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Fee No. 95027726, April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East a distance of 12.00 feet parallel to and 12.00 feet Easterly of said "ODOT" line to the true point of beginning; thence North 00°09'24" East, parallel to & 12.00 feet Easterly of said "ODOT" line, a distance of 347.16 feet; thence along the arc of a curve to the right, said curve having a radius of 116.16 feet, arc length of 101.04 feet, central angle of 49°50'12", a chord bearing of North 25°04'30" East, and a chord length of 97.88 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 45.00 feet, arc length of 53.94 feet, central angle of 33°01'29", a chord bearing South 71°56'03" East, and a chord length of 30.43 feet to a point of compound curvature; thence along the arc of a curve to the right, said curve having a radius of 100.00 feet, arc length of 61.13 feet, central angle of 35°01'29", a chord bearing of South 43°49'18" East, and a chord length of 60.18 feet to the intersection with the West line of Boones Ferry Road as described in said "ODOT" Deed and a point on a non-tangent curve to the left, said point having a radial bearing of North 63°41'28" East; thence along said "ODOT" Deed, along the arc of said non-tangent curve to the left, said curve having a radius of 595.65, arc length of 30.57 feet, central angle of 02°56'25", a chord bearing of South 27°46'44" East, and a chord length of 30.56 feet to along the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 15°09'35" West, a distance of 83.41 feet; thence South 38°02'13" East, a distance of 120.44 feet; thence South 57°57'47" West, a distance of 55.00 feet; thence South 20°29'49" West, a distance of 171.35 feet to a point that is 12 feet from, when measured at right angles, to the South line of said Lot 7; thence South 89°38'33" West, a distance of 97.95 feet, more or less, to the true point of beginning.

ALSO EXCEPTING THEREFROM that portion conveyed to Prairie Corp., an Oregon corporation, by instrument recorded July 19, 2000 as Fee No. 2000-48398, more particularly described as follows:

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of said Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995 (herein after referred to as "ODOT"); thence North 00°09'24" East parallel to said East line, 18.00 feet; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet to the true point of beginning; thence North 20°29'49" East, 170.00 feet; thence North 57°57'47" East, 55.00 feet to the Westerly line of Boones Ferry Road as described in said "ODOT" Deed; thence along said Westerly line South 38°02'13" East, 2.34 feet; thence leaving said Westerly line South 51°57'47" West, 20.00 feet; thence South 20°40'49" West, 186.07 feet to a point 18.00 feet Northerly when measured at right angles to the said South line





of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 26.13 feet, more or less, to the true point of beginning.

FURTHER EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

**PARCEL II:**

A tract of land located in Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, in the Southeast one-quarter of Section 2, Township 3 South, Range 1 West, of the Willamette Meridian, in the City of Wilsonville, County of Washington and State of Oregon, being further described as follows:

Commencing at the Southeast corner of Lot 7, EDWARDS BUSINESS INDUSTRIAL PARK, recorded in Book 31, page 14 in the Plat Records of Washington County, Oregon; thence South 89°38'33" West, along the South line of said Lot 7, a distance of 379.33 feet to a point 12.00 feet East of the East line of Parcel I as described in the Deed from John Q. Hammons to the State of Oregon, by and through its Department of Transportation, Document Number 95027726, recorded April 21, 1995; thence North 00°09'24" East parallel to said East line, 18.00 feet to the true point of beginning; thence North 89°38'33" East parallel to said South line of Lot 7, 95.10 feet; thence South 20°29'49" West, 6.42 feet to a point 12.00 feet Northerly when measured at right angles to the said South line of Lot 7; thence South 89°38'33" West parallel to said South line of Lot 7, 92.87 feet, more or less, to a point 12.00 feet East of the said East line of Parcel I; thence North 00°09'24" East parallel to said East line, 6.00 feet to the true point of beginning.

EXCEPTING THEREFROM that portion dedicated to the City of Wilsonville for street purposes by instrument recorded March 7, 2003 as Fee No. 2003-034138.

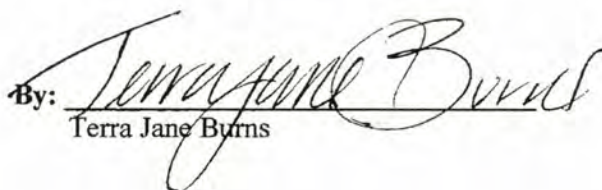
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 2, 2014, I served the foregoing *Defendants' ORCP 21*  
3 *Motions, Declaration of Garry L. LaPoint in Support of Defendants' ORCP 21 Motions, and*  
4 *Defendants' Counsel's Certificate of Compliance (UTCR 5.010)* on the following Parties by  
5 mailing a true copy thereof, via first class mail, postage prepaid, to them at the following  
6 address:

7  
8 Garrett S. Garfield  
9 Holland & Knight LLP  
10 111 SW 5th Avenue, Ste. 2300  
11 Portland, OR 97204  
12 *Counsel for Plaintiff*

11 Wallace W. Lien  
12 Wallace W. Lien, P.C.  
13 1775 32nd Place NE, Suite A  
14 Salem, OR 97301  
15 *Co-Counsel for Defendant*

15 **LAIDLAW & LAIDLAW, PC**

16  
17 By:   
18 Terra Jane Burns

26 **CERTIFICATE OF SERVICE**

LAIDLAW & LAIDLAW, P.C.  
21590 Willamette Drive  
West Linn, Oregon 97068  
Telephone: 503.305.6894  
Facsimile: 503.267.4840



1  
2  
3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF WASHINGTON  
6

7 WILSONVILLE DEVCO, LLC, and NW ) Case No. C138125CV  
8 COFFEE GROUP, LLC, )  
9 Plaintiffs, ) **DECLARATION OF GARRY L. LAPOINT**  
10 v. ) **IN SUPPORT OF DEFENDANTS' ORCP**  
11 LAPOINT BUSINESS GROUP, LLC and ) **21 MOTIONS**  
12 GARRY LAPOINT, )  
13 Defendant )

14 I, Garry L. LaPoint, hereby declare and state, as follows:  
15

16 1. I am at least 18 years of age and am competent to make this declaration. Each of the  
17 facts set forth herein are based on my personal knowledge, except those facts set forth on  
18 information and belief. As to those facts, I am informed and believe them to be true.

19 2. I make this declaration in support of Defendants' ORCP 21 Motions, filed concurrently  
20 herewith.

21 3. At all times material, I have been a member of, and registered agent for, LaPoint  
22 Business Group, LLC, an Oregon Limited Liability Company. A copy of LaPoint Business  
23 Group, LLC's, Business Entity Data form, taken from the Oregon Secretary of State's website, is  
24 marked as Exhibit B and attached to Defendants' ORCP 21 Motions.

25 4. A copy of the last vesting deed to the real property benefitted by the Restrictive Covenant  
26 – 25410 SW 95<sup>th</sup> Avenue Wilsonville, Oregon ("the benefitted parcel") – is marked as Exhibit C

Page 1 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21  
MOTIONS

LAILAW & LAILAW, P.C.  
21590 Willamette Drive  
West Linn, Oregon 97068  
Telephone: 503.305.6894  
Facsimile: 888.287.4840

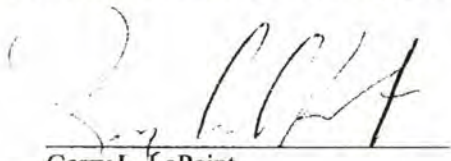
1 and attached to Defendants' ORCP 21 Motions.

2 5. LaPoint Business Group, LLC, is the sole owner of the benefitted parcel. I am a member  
3 and of, and registered agent for, LaPoint Business Group, LLC. I hold no interest in and to the  
4 benefitted parcel in my personal capacity.

5 6. I am informed and believe that Plaintiffs' complaint seeks a declaratory judgment against  
6 me, in my personal capacity. I hold no interest in or to the benefitted parcel in my personal  
7 capacity. I respectfully request, that the Court dismiss me from Plaintiffs' Complaint For  
8 Declaratory Relief.

9  
10 **I hereby declare that the above statement is true to the best of my knowledge and**  
11 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**  
12 **for perjury.**

13 Dated: December 30, 2013

14   
Garry L. LaPoint

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Page 2 – DECLARATION OF GARRY L. LAPOINT IN SUPPORT OF DEFENDANTS' ORCP 21  
MOTIONS

LAIDLAW & LAIDLAW, P.C.  
21590 Willamette Drive  
West Linn, Oregon 97068  
Telephone: 503.305.6894  
Facsimile: 888.287.4840



1  
2  
3  
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF WASHINGTON

6 WILSONVILLE DEVCO, LLC, and NW  
7 COFFEE GROUP, LLC,

8 Plaintiffs,

9 v.

10 LAPOINT BUSINESS GROUP, LLC and  
11 GARRY LAPOINT,

12 Defendant

) Case No. C138125CV  
)  
)  
)

) **DEFENDANTS' COUNSEL'S**  
) **CERTIFICATE OF COMPLIANCE**  
) **(UTCR 5.010)**  
)  
)  
)

13  
14 I, Alec J. Laidlaw, attorney for Defendants in the above captioned matter, hereby certify  
15 as follows:

16 1. On December 27, 2013, I telephoned Plaintiffs' counsel to confer on the issues raised in  
17 Defendants' ORCP 21 Motions, filed concurrently herewith. Despite the good-faith efforts of  
18 counsel, the parties were not able to agree on the issues set forth in the accompanying ORCP 21  
19 Motions.

20 **I hereby declare that the above statement is true to the best of my knowledge and**  
21 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**  
22 **for perjury.**

23 Dated: December 30, 2013

24 LAIDLAW & LAIDLAW, PC

25 Alec J. Laidlaw, OSB #055154

26 Jason Janzen, OSB #063090

Attorneys for Defendants

alec@laidlawandlaidlaw.com

Page 1 - DEFENDANTS' COUNSEL'S CERTIFICATE OF COMPLIANCE (UTCR 5.010)

LAIDLAW & LAIDLAW, P.C.  
21590 Willamette Drive  
West Linn, Oregon 97068  
Telephone: 503.305.6894  
Facsimile: 888.287.4840  
92 of 92

EXHIBIT 1

---

**PLANNING DIVISION MEMORANDUM**

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February 10, 2014

To: Development Review Board Panel A

From: Daniel Pauly AICP, Associate Planner

Re: The Human Bean Update and Recommend Staff Report Changes for DB13-0046 et. seq.

---

A number of materials have been submitted during the open record period and in response and rebuttal to those submittals. This memo covers two topics in these materials, the additional a.m. peak traffic study and internal site circulation, including delivery traffic. This memo will be Exhibit A4.

An a.m. peak traffic study has been completed by DKS and included in Exhibit B6, applicants open record submittal. The report concludes "there are no operating concerns at the study intersections or project driveway during the a.m. peak hour."

Internal site circulation and parking for larger vehicles including delivery trucks remains a discussion point. As far as vehicle circulation, the applicant has proposed additional striping and site directional signage to aid circulation. Exhibit E of Exhibit B6 shows delivery truck circulation using LaPoint's property for ingress circulation, but parking on the Wilsonville Devco property to avoid conflicts with fuel delivery. However, there remains disagreement among the property owners whether the current easements and agreement allow such circulation. The easement disagreement will need to be resolved privately by the parties. In Exhibit B8 Wilsonville Devco shows a workable Human Bean delivery truck circulation in the case that it is determined they are unable to use LaPoint's property. The scope of the current review is limited to the Human Bean and Carl's Jr deliveries and site circulation are out of that scope.

Staff recommends the DRB amend the staff report findings related to circulation as follows. Changes are in **bold italic underline text**:

***Subsection 4.155 (.03) A. Functional Design of Parking, Loading, and Delivery Areas***

A31. **Review Criteria**: "Parking and loading or delivery areas shall be designed with access and maneuvering area adequate to serve the functional needs of the site and shall:

1. Separate loading and delivery areas and circulation from customer and/or employee parking and pedestrian areas. Circulation patterns shall be clearly marked.
2. To the greatest extent possible, separate vehicle and pedestrian traffic."

**Finding**: These criteria are satisfied.

**Explanation of Finding**: Sheet DD5 "Proposed Truck Turning Movements" of Exhibit B2 of DB12-0074 through 0076 demonstrates sufficient access and maneuvering areas for delivery trucks, both for the Chevron fuel and Carl's Jr. and the coffee kiosk. Staff notes fuel off-loading, and restaurant **and** other commercial delivery parking are in the same area



of the site separating these operations from the general employee and customer parking and pedestrian areas. The access and maneuvering areas for passenger vehicle parking areas appears sufficient providing adequate space for two-way travel. As shown in Exhibits B6 and B7 additional pavement markings and signs are being added to aid in vehicle circulation. The applicant states in their compliance narrative in their notebook, Exhibit B1, that "care has been given to the extent practicable to separate vehicle and pedestrian traffic." Staff has reviewed the site plan and found no code supported site changes to further separate pedestrian and vehicle traffic. Staff notes disagreement exists between LaPoint and Wilsonville Devco concerning the extent of the easement that would allow deliveries trucks to access the Wilsonville Devco site via LaPoint's property as shown on Exhibit E of Exhibit B6. Exhibit B8 shows an alternative for larger trucks delivering to the Human Bean in the case that private resolution of the easement disagreement does not allow the trucks to maneuver on LaPoint's property. Exhibit B8 shows adequate truck access and circulation to the Human Bean portion of the site. For a development of the proposed size Wilsonville Development Code does not require a separate loading/delivery area, and therefore as is typical of fast food and coffee kiosk type uses in general, the deliveries by necessity happen in the customer/employee parking and circulation areas.

#### ***Subsection 4.155 (.03) D. Parking Connectivity and Efficient On-site Circulation***

- A34. **Review Criteria:** "Where possible, parking areas shall be designed to connect with parking areas on adjacent sites so as to eliminate the necessity of utilizing the public street for multiple accesses or cross movements. In addition, on-site parking shall be designed for efficient on-site circulation and parking."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The proposed development adds to an existing commercial center that includes a fuel station, convenience market, sit down restaurant, convention center, and hotel. The proposed uses as well as the existing Chevron and Holiday Inn share a common driveway off 95<sup>th</sup> Avenue and their access and parking areas are interconnected. Joint use of many the access and maneuvering areas is covered in a Development Agreement. Two factors commonly considered to determine such efficiency include proximity of parking to likely destinations, and direct vehicle and pedestrian paths between destinations with limited choke points. To the extent practicable parking is provided close to the coffee kiosk for short, efficient pedestrian trips after parking. Where parking is further away towards Chevron a direct pedestrian path is provided to the coffee kiosk. Multiple pedestrian accesses from the public sidewalk are provided, including ones providing the most direct path from the sidewalk to business entrances. All vehicles enter the site through a shared driveway with Holiday Inn and Chevron. While this could become a choke point, care has been taken to design the driveway for optimal performance to minimize traffic delays, as reflected in the Development Agreement. Straight drive aisles and multiple access points allow for direct vehicle travel within the site. As shown in Exhibits B6 and B7 additional signs and pavement markings have been added to further aid in directing circulation thus aiding efficiency.



***Subsection 4.421 (.01) and (.02) Site Design Review-Design Standards***

- B4. **Review Criteria:** This subsection lists the design standards for Site Design Review. Listed A through G. Pursuant to subsection (.02) "The standards of review outlined in Sections (a) through (g) above shall also apply to all accessory buildings, structures, exterior signs and other site features, however related to the major buildings or structures."

**Finding:** These criteria are satisfied.

**Explanation of Finding:** The applicant has provided sufficient information demonstrating compliance with the standards of this subsection. Among the information provided is a written response to these standards on page 18-20 of the compliance narrative in the applicant's notebook, Exhibit B1. Staff notes a patio area has been provided without information on the planned furnishings. Condition of Approval PDB 9 ensures the furnishings are durable and match or complement the building, thus helping ensure site design review standards are met. *Among the design standards is a requirement that special attention be paid to general circulation and parking areas that are safe and convenient. As shown by the number of added signs and markings, as well as specific drawings for different truck circulation scenarios (see Exhibits B6, B7, and B8), the applicant has demonstrate special attention has been given to site circulation and safe and convenient parking areas.*





29799 SW Town Center Loop E  
Wilsonville, Oregon 97070  
(503) 682-1011  
(503) 682-1015 Fax Administration  
(503) 682-7025 Fax Community Development

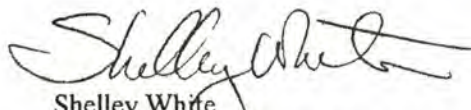
VIA: Certified Mail, Return Receipt Requested

February 13, 2014

Josh Veentjer  
Wilsonville Devco LLC  
P.O. Box 6437  
La Quinta, CA 92248

Re: Case File DB13-0046 et seq

The Development Review Board's Decision and Resolution No. 270 are attached, denying your request for a Stage II Final Plan revision, Site Design Review, and Master Sign Plan revision and Sign Waiver for development of a new 450 square foot drive-thru coffee kiosk. Thank you.



Shelley White  
Planning Administrative Assistant

CC: Ben Altman – SFA Design Group  
Craig Anderson – CB Anderson Architects  
Tom Berg  
Garry LaPoint  
Jason LaPoint  
Steve Pfeiffer – Perkins Coie

CC via e-mail: Wallace W. Lien  
George Gregory



"Serving The Community With Pride"

**EXHIBIT 3**

February 13, 2014

**DEVELOPMENT REVIEW BOARD PANEL A**

**NOTICE OF DECISION**

**Project Name:** Boones Ferry Pointe – The Human Bean Drive-Up Coffee Kiosk

**Case File Nos.:** DB13-0046 – Stage II Final Plan revision  
DB13-0047 – Site Design Review  
DB13-0048 – Master Sign Plan revision and Sign Waiver

**Applicant/Owner:** Josh Veentjer – Wilsonville Devco LLC

**Authorized  
Representatives:** Ben Altman – SFA Design Group  
Craig Anderson – CB Anderson Architects

**Property Description:** Tax Lots 302, Section 2DB; T3S R1W; Washington County;  
Wilsonville, Oregon

**Location:** Corner of 95<sup>th</sup> Avenue and Boones Ferry Road

On February 10, 2014, at the meeting of the Development Review Board the following action was taken on the above-referenced proposed development applications:

Denied

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022(.02)*.

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this **13<sup>th</sup> day of February 2014** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022(.09)*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960

Attachments: DRB Resolution No. 270, Copy of proposed DRB Resolution No. 268 which was rejected.



**DEVELOPMENT REVIEW BOARD  
RESOLUTION NO. 270**

A RESOLUTION REJECTING PROPOSED RESOLUTION NO. 268 AND DENYING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95<sup>TH</sup> AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits, exhibits, and staff report were duly considered by the Development Review Board Panel A at a scheduled meetings conducted on January 13 and February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

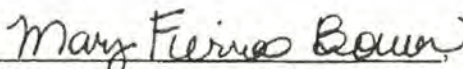
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject, and

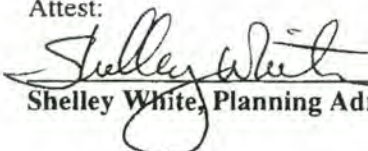
WHEREAS citing concerns about on site traffic circulation, congestion and safety in general and referring specifically to Wilsonville City Code Section 4.400.02 and 4.421 C, the Development Review Board moved, seconded and passed a motion, by a vote of 4 to 1, rejecting proposed Resolution No. 268, and by reference the staff report dated January 6, 2014, finding that the Application did not satisfy Wilsonville Code requirements pertaining to safety and circulation.

NOW, THEREFORE, BE IT RESOLVED THAT THE City of Wilsonville Development Review Board does hereby reject proposed Resolution No. 268, thereby denying the above described Application for reasons stated herein and with more particularity in the record of decision.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10<sup>th</sup> day of February, 2014 and filed with the Planning Administrative Assistant on February 13, 2014. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per WC Sec 4.022(.09) unless appealed per WC Sec 4.022(.02) or called up for review by the council in accordance with WC Sec 4.022(.03).

  
Mary Fierros Bower Chair, Panel A  
Wilsonville Development Review Board

Attest:

  
Shelley White, Planning Administrative Assistant



**DEVELOPMENT REVIEW BOARD  
RESOLUTION NO. 268**

**A RESOLUTION ADOPTING FINDINGS AND CONDITIONS APPROVING A STAGE II FINAL PLAN REVISION, SITE DESIGN REVIEW AND MASTER SIGN PLAN REVISION AND SIGN WAIVER FOR DEVELOPMENT OF A NEW 450 SQUARE FOOT DRIVE-THRU COFFEE KIOSK AT THE CORNER OF 95<sup>TH</sup> AVENUE AND BOONES FERRY ROAD. THE SUBJECT SITE IS LOCATED ON TAX LOT 302 OF SECTION 2DB, T3S, R1W, WASHINGTON COUNTY, OREGON. SFA DESIGN GROUP AND CB ANDERSON ARCHITECTS - REPRESENTATIVES FOR WILSONVILLE DEVCO LLC - APPLICANT/OWNER.**

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.068 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated January 6, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on January 13, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated January 6, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

DB13-0046, DB13-0047, DB13-0048 Class 3 Stage II Final Plan Revision, Site Design Review, and Master Sign Plan Revision with Sign Waiver to replace a previously-approved but un-built multi-tenant commercial building at Boones Ferry Pointe with a drive-thru coffee kiosk and associated improvements..

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 13<sup>th</sup> day of January, 2014 and filed with the Planning Administrative Assistant on \_\_\_\_\_. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022(.02)* unless appealed per *WC Sec 4.022(.02)* or called up for review by the council in accordance with *WC Sec 4.022(.03)*.

\_\_\_\_\_  
Mary Fierros Bower Chair, Panel A  
Wilsonville Development Review Board

Attest:

\_\_\_\_\_  
Shelley White, Planning Administrative Assistant



Exhibit A1  
**STAFF REPORT**  
**WILSONVILLE PLANNING DIVISION**

*SW 110th Avenue Street Vacation, PDP 3 and 4 East*  
*“Tonquin Meadows”*

**DEVELOPMENT REVIEW BOARD PANEL ‘A’**  
**QUASI-JUDICIAL PUBLIC HEARING FOR STREET VACATION**  
**STAFF REPORT**

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<b>HEARING DATE</b>	February 10, 2014
<b>DATE OF REPORT:</b>	February 3, 2014

---

**APPLICATION NO.:** DB14-0001 Vacation of a Portion of SW 110th Avenue Right-of-Way

**REQUEST/SUMMARY:** The Development Review Board is being asked to review a Quasi-judicial Street Vacation

**LOCATION:** Portions of SW 110<sup>th</sup> Avenue between SW Mont Blanc Street and SW Tooze Road/SW Boeckman Road.

**ADJACENT  
PROPERTY OWNERS:** Donald E. Bischoff and Sharon L. Lund (Tax Lot 180)  
Polygon at Villebois III LLC (Tax Lots 2916 and 2919)  
Polygon at Villebois V LLC (Tax Lot 301)

**PETITIONER:** Fred Gast, Polygon NW Company

**APPLICANT’S REP.:** Stacy Connery, AICP, Pacific Community Design, Inc.

**COMPREHENSIVE PLAN MAP DESIGNATION:** Residential-Village

**ZONE MAP CLASSIFICATIONS:** V (Village)

**STAFF REVIEWERS:** Daniel Pauly AICP, Associate Planner  
Steve Adams PE, Development Engineering Manager

**STAFF RECOMMENDATION:** **Recommend approval with Conditions** of the requested Street Vacation to City Council.

## APPLICABLE REVIEW CRITERIA

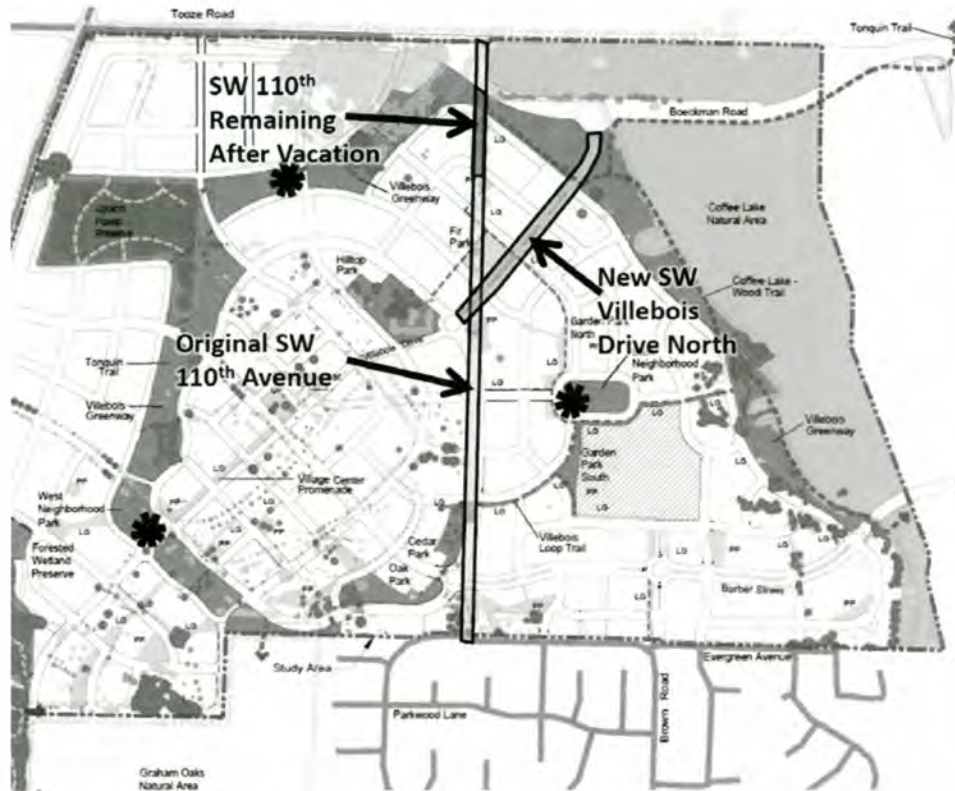
<b>DEVELOPMENT CODE</b>	
Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Subsection 4.031 (.01) L.	Authority of the Development Review Board: Street Vacations
Subsection 4.032 (.01) D.	Authority of the Planning Commission: Street Vacations
Subsection 4.033 (.01) H.	Authority of the City Council: Street Vacations
Subsection 4.034 (.07)	Street Vacation Review Standards and Procedures
<b>OTHER PLANNING DOCUMENTS</b>	
Villebois Village Master Plan	
Transportation Systems Plan	
SAP East Approval Documents	
PDP 3 East Approval Documents	
PDP 4 East Approval Documents	
<b>OREGON REVISED STATUTES</b>	
ORS 271.080	Vacation in incorporated cities; petition; consent of property owners.
ORS 271.120	Vacation hearing; determination.
ORS 271.140	Title to vacated areas.
ORS 271.150	Vacation records to be filed; costs.
ORS 271.190	Vacation consent of owners of adjoining properties; other required approval.
ORS 271.200	Vacation Petition; notice

## BACKGROUND/SUMMARY:

SW 110<sup>th</sup> Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110<sup>th</sup> and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110<sup>th</sup> Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110<sup>th</sup> Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East. The proposed vacation allows the conversion of much of the remainder of SW 110<sup>th</sup> Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110<sup>th</sup> Avenue will remain to provide access to a property on the west side of SW 110<sup>th</sup> just south of SW Tooze Road not yet proposed for development. The north-south



connectivity of SW 110<sup>th</sup> Avenue will be replaced by a new segment of SW Villebois Drive North which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman bridge. The demolition of SW 110<sup>th</sup> and construction of the new SW Villebois Drive North segment is currently planned later this year together with Polygon Homes construction of a new subdivision previously approved.



## CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant's analysis of compliance with the applicable criteria. This Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board recommend approval of the proposed application (DB14-0001) to City Council with the following conditions:

### **Conditions:**

- |  |
|--|
| <p><b>PF 1.</b> Concurrently with the 110th Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110th Avenue prior to its demolition and reconfiguration of the street network.</p> |
| <p><b>PF 2.</b> For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum</p>        |

	15-foot wide easements centered on the utility. For private easements they shall be of sufficient width as needed by the private utility and as approved by the City.
<b>PF 3.</b>	The future demolition of 110th Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.

### **MASTER EXHIBIT LIST:**

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case File DB14-0001.

- A1.** Staff report and findings (this document)
- A2.** Staff's Slide Presentation (available at public hearing)
- B1.** Applicant's Submitted Materials
  - Narrative
  - Copy of Application Form
  - Signed Petition, Petition Exhibits & Property Ownership Info
  - Legal Description and Sketch
  - Copy of PDP 3E & 4E Phasing Plan
- C1.** Comments and Conditions from Engineering Division
- C2.** Comments from Public Works Department

### **FINDINGS OF FACT:**

1. Prior land use actions include:

#### Legislative:

02PC06 - Villebois Village Concept Plan  
 02PC07A - Villebois Comprehensive Plan Text  
 02PC07C - Villebois Comprehensive Plan Map  
 02PC07B - Villebois Village Master Plan  
 02PC08 - Village Zone Text  
 04PC02 - Adopted Villebois Village Master Plan  
 LP-2005-02-00006 - Revised Villebois Village Master Plan  
 LP-2005-12-00012 - Revised Villebois Village Master Plan (Parks and Recreation)  
 LP13-0005 - Revised Villebois Village Master Plan

#### Quasi Judicial:

04 DB 22 et seq - SAP-East  
 DB12-0042 et seq - PDP-3E Tonquin Meadows  
 DB12-0050 et seq - PDP-4E Tonquin Meadows No. 2  
 DB13-0013 et seq - PDP-4C Polygon Northwest at Villebois No. 2  
 AR13-0046 PDP 3 and 4 East Phasing Amendment



2. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

## **CONCLUSIONARY FINDINGS:**

### **Planning and Land Development Ordinance**

#### ***Subsections 4.031 (.01) L., 4.032 (.01) D., Subsection 4.033 (.01) H. Authority to Review Street Vacations***

1. **Review Criteria:** These subsections define the roles of the Development Review Board, the Planning Commission, and City Council for street vacations. The Development Review Board is authorized to make recommendations to City Council for street vacations where a specific development application has been filed for the subject property. The Planning Commission is authorized to make recommendations to City Council for street vacations where no specific development application has been filed for the subject property. City Council takes final action on street vacation applications.

**Finding:** These criteria are satisfied.

**Details of Finding:** Specific development applications have been filed and approved by the City for the land being vacated subject to approval of the street vacation. The land is approved to be development as private park space. See case files DB12-0042 (Preliminary Development Plan, Villebois Phase 3 East), DB12-0048 (Final Development Plan for Parks and Open Space, Villebois Phase 3 East), DB12-0050 (Preliminary Development Plan, Villebois Phase 4 East), and DB12-0054 (Final Development Plan for Parks and Open Space, Villebois Phase 4 East). Due to the previous submission of specific development application for the subject land, the Development Review Board is reviewing the street vacation to make a recommendation to City Council. The City Council will then take the final action on the request.

#### ***Subsection 4.034 (.07) Standards for Street Vacation***

2. **Review Criteria:** "Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.

**Finding:** These criteria are satisfied.

**Details of Finding:** As shown in Findings 9 -16 below, the request is being reviewed in accordance with ORS 271.

### **Previous Land Use Approvals**

#### ***DB12-0042 SAP-East PDP 3E, Preliminary Development Plan, Condition of Approval PFA 34.***

3. **Review Criteria:** "The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110th Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110th Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.”

**Finding:** These criteria are satisfied.

**Details of Finding:** PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110th Avenue will be demolished with roadway construction. Portions of 110th Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110th Avenue. The Final Plat for the 1st phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110th Avenue will allow the Applicant to comply with Condition PFA 34.

### **Transportation Systems Plan**

***Table 5-4. Higher Priority Projects (Southwest Quadrant) Roadway Extensions***

4. **Review Criteria:**

RE-09	Villebois Drive Extension	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Costa Circle to Coffee Lake Drive	\$390,000
RE-10	Villebois Drive Extension (Part 2)	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Coffee Lake Drive to Boeckman Road	\$250,000

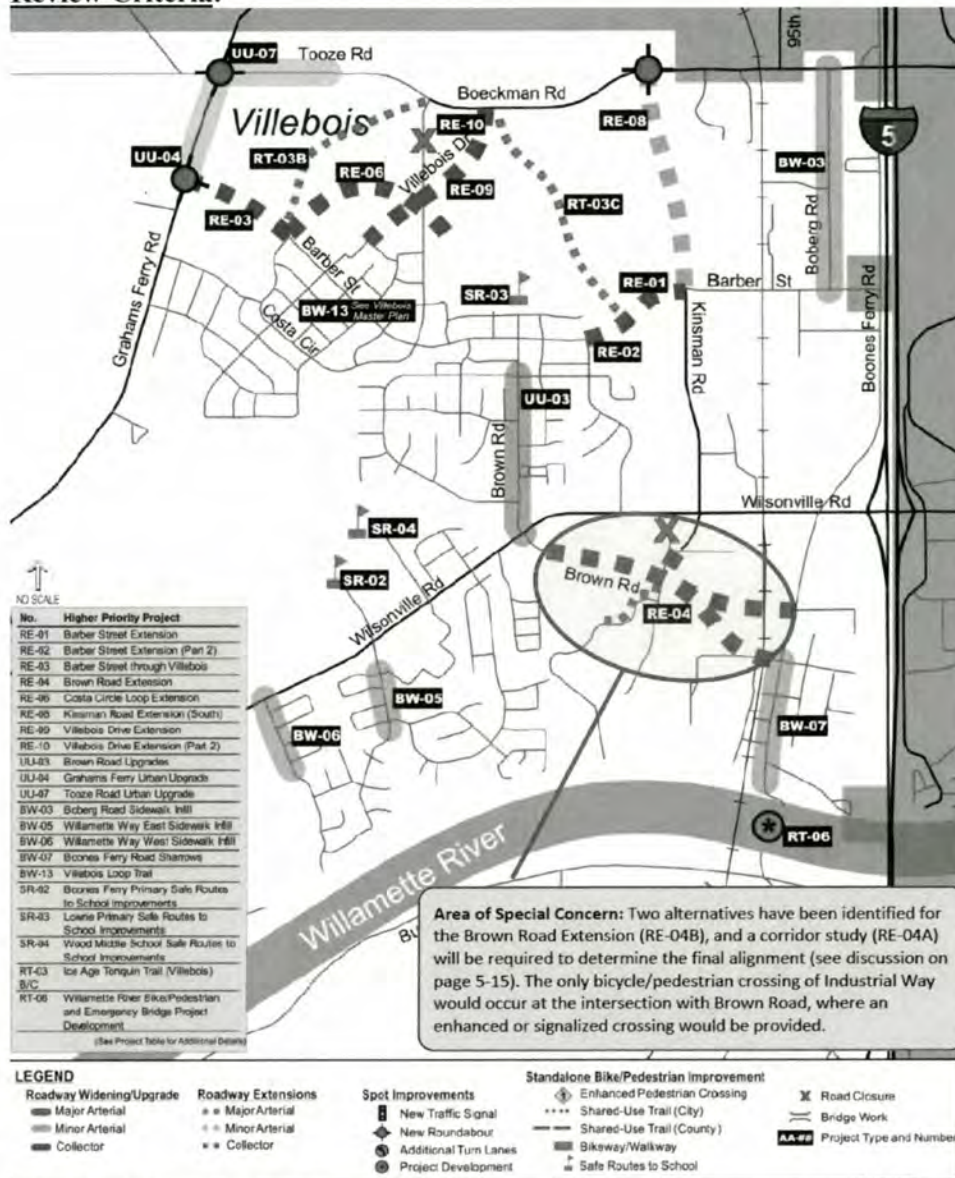
**Finding:** These criteria are satisfied.

**Details of Finding:** The listed extensions of Villebois Drive in the Transportation System Plan are planned to be constructed as part of Construction Phase 1 of PDP 3 and 4 East as shown in the phasing plan approved in Case File AR13-0046, and will replace the north-south connectivity between Villebois and SW Boeckman Road/SW Tooze Road.



Figure 5-5. Higher Priority Projects (Southwest Quadrant)

5. Review Criteria:



**Finding:** This criterion is satisfied.

**Details of Finding:** The closure of SW 110<sup>th</sup> is shown by the red "X" in Figure 5-5 in association with projects RE-09 and RE-10, extension of SW Villebois Drive.

## Villebois Village Master Plan

**Figure 5B Parks and Open Space Categories**

6. Review Criteria:



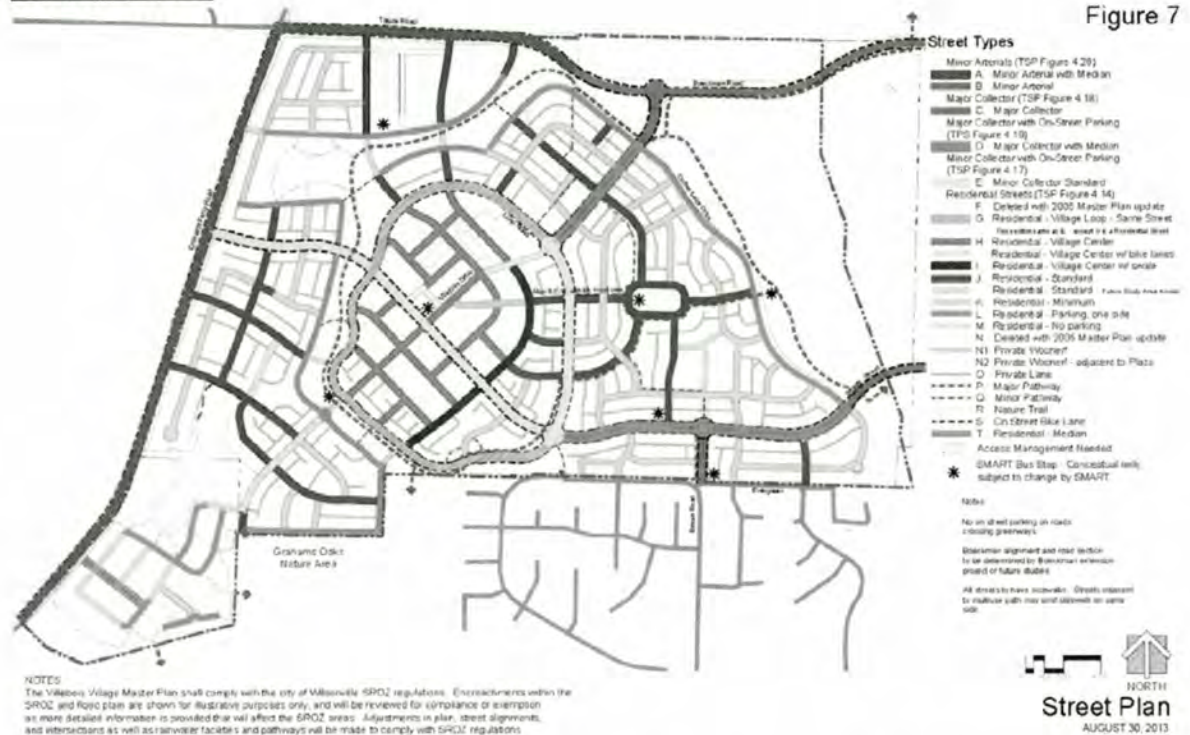
**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show the intention for the portions of SW 110<sup>th</sup> being vacated to become private parks.



**Figure 7 Street Plan**

**7. Review Criteria:**



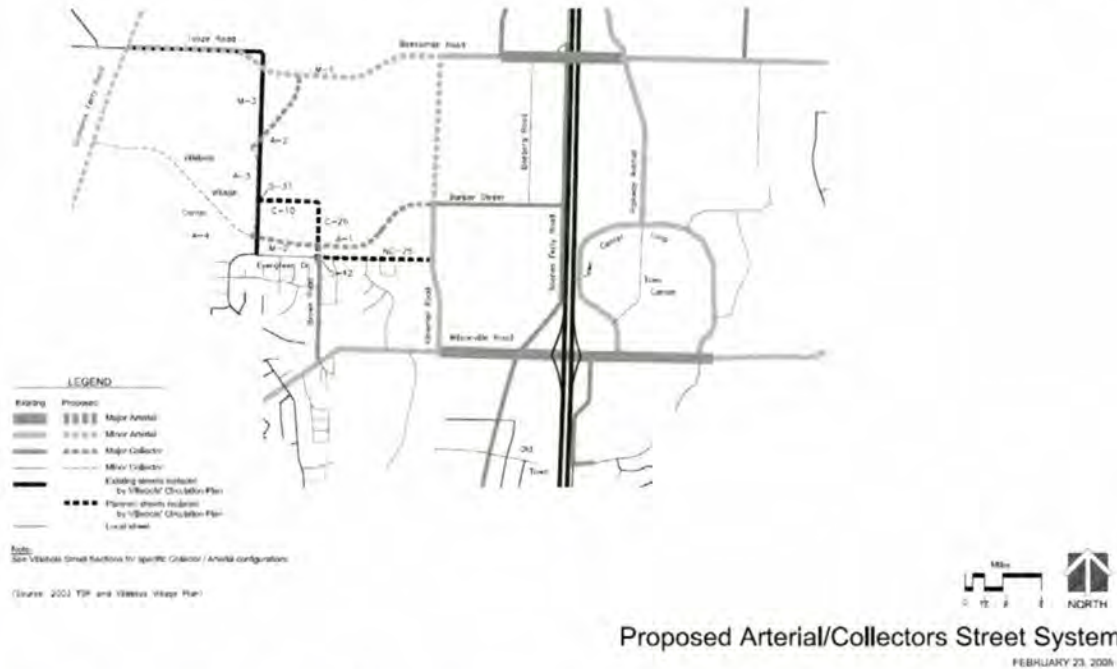
**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show how SW 110<sup>th</sup> is not planned as part of the circulation and street system in the Villebois Village Master Plan.

**Figure 8. Proposed Arterial and Collector System**

8. **Review Criteria:**

Figure 8



**Finding:** This criterion is satisfied.

**Details of Finding:** Figure 8 of the Villebois Village Master Plan shows SW 110<sup>th</sup> Avenue as an “Existing street replaced by the Villebois Circulation Plan.”

**Oregon Revised Statutes**

***ORS 271.080 (1) Petition for Street Vacation in Incorporated Cities***

9. **Review Criterion:** “Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.”

**Finding:** This criterion is satisfied.

**Details of Finding:** Polygon Homes has filed the described petition. Previous land use actions by the City approve Polygon, contingent on the vacation, to construct private parks on the vacated right-of-way. The reason for the vacation is clear in previous land use approvals and the record of this request, including the connectivity provided by SW 110<sup>th</sup> being provided by planned new roads.

***ORS 271.080 (2) Consent of Adjoining Property Owners***

10. **Review Criterion:** “There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds



in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing."

**Finding:** This criterion is satisfied.

**Details of Finding:** The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

#### ***ORS 271.090 Submission of Street Vacation Petition to City***

11. **Review Criteria:** "The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The petition has been submitted to the City, and Polygon has been informed of the hearing dates before the Development Review Board and City Council.

#### ***ORS 271.100 City Action of Street Vacation Petition***

12. **Review Criteria:** "The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The vacation of these portions of SW 110<sup>th</sup> have long been showed in City adopted master plans and a development application was approved by the City to develop the vacated right-of-way contingent on approval of the vacation. The City is setting and holding public hearings to consider the petition.

#### ***ORS 271.110 Notice of Hearing***

13. **Review Criteria:** This section prescribes the notices required for street vacation hearings including newspaper publication and posting of notices along the right-of-way to be vacated.

**Finding:** These criteria are satisfied.

**Details of Finding:** The noticing requirements required by ORS 271.110 have or will be met prior to the hearing.



***ORS 271.120 Hearing; determination***

14. **Review Criteria:** "At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest."

**Finding:** These criteria are satisfied.

**Details of Finding:** The consent of the owners of the requisite area have been obtained as shown with the attached petitions, notice has been given as prescribed. Public policy, as shown in the Villebois Village Master Plan and Transportation Systems Plan, has long been to vacate the proposed area upon replacement with streets planned as part of the Villebois development. After receiving a recommendation from the Development Review Board the City Council would vacate the street by ordinance.

***ORS 271.140 Title to Vacated Areas***

15. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

***ORS 271.150 Vacation Records to be Filed***

16. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the ordinance will be recorded as required by this section, the cost of which will be borne by the petitioner.



**RECEIVED**  
JAN 06 2014

**NARRATIVE & COMPLIANCE REPORT**  
**SW 110<sup>TH</sup> AVENUE ROW VACATION**


BY:.....

**TABLE OF CONTENTS**

<b>I. PROPOSAL SUMMARY</b>	<b>2</b>
GENERAL INFORMATION	2
REQUEST & PROJECT DESCRIPTION	2
<b>II. WILSONVILLE PLANNING &amp; LAND DEVELOPMENT ORDINANCE</b>	<b>3</b>
4.031 AUTHORITY OF THE DEVELOPMENT REVIEW BOARD	3
4.033 AUTHORITY OF THE CITY COUNCIL	3
4.034 APPLICATION REQUIREMENTS	3
<b>III. CONDITIONS OF APPROVAL</b>	<b>4</b>
DB12-0042 SAP-EAST PDP 3E, PRELIMINARY DEVELOPMENT PLAN	4
<b>IV. OREGON ADMINISTRATIVE RULE (ORS) 271</b>	<b>4</b>
271.080 VACATION IN INCORPORATED CITIES; PETITION; CONSENT OF PROPERTY OWNERS	4
271.120 HEARING; DETERMINATION	5
271.140 TITLE TO VACATED AREAS	5
271.150 VACATION RECORDS TO BE FILED; COSTS	6
271.190 CONSENT OF OWNERS OF ADJOINING PROPERTY; OTHER REQUIRED APPROVAL	6
271.200 PETITION; NOTICE	6
<b>V. CONCLUSION</b>	<b>7</b>

**LIST OF EXHIBITS**

- A COPY OF APPLICATION FORM
- B SIGNED PETITION, PETITION EXHIBITS & PROPERTY OWNERSHIP INFO
- C LEGAL DESCRIPTION AND SKETCH
- D COPY OF PDP 3E & PDP 4E PHASING PLAN

 City of Wilsonville  
Exhibit B1 DB14-0001

## **I. PROPOSAL SUMMARY**

### **GENERAL INFORMATION**

Applicant/Property Owner:

**Polygon Northwest Company**

Applicant's Representative:

**Pacific Community Design, Inc.**  
12564 SW Main Street  
Tigard, OR 97223  
(503) 941-9484  
Contacts: Stacy Connery, AICP  
Patrick Espinosa, PE  
Travis Jansen, PLS

Subject Site:

Portions of SW 110<sup>th</sup> Avenue ROW in  
Villebois SAP East, PDP 3E and PDP  
4E (Tonquin Meadows & Tonquin  
Meadows No. 2)

Abutting Tax Lots:

2916, 2919, 180 & 301 on Map  
3S1W15

### **REQUEST & PROJECT DESCRIPTION**

The Applicant requests approval of a Street Vacation for portions of SW 110<sup>th</sup> Avenue ROW within Villebois PDP 3E and PDP 4E (also known as Tonquin Meadows & Tonquin Meadows No. 2). Exhibit C is a legal description and sketch that depicts the area of the proposed ROW vacation.

The City approved SAP East PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile No. DB12-0053) on November 19, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II areas of PDP 3E and PDP 4E to occur concurrently (see Phasing Plan in Exhibit D). Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. Street improvements to be provided with PDP 3E and PDP 4E include the construction of Costa Circle East and SW Villebois Drive North, replacing the connections provided through the portions of SW 110<sup>th</sup> Avenue within the subject area. The existing transition between Costa Circle and 110<sup>th</sup> Avenue will be demolished with this roadway construction. Portions of 110<sup>th</sup> Avenue within the subject site will be closed with completion of roadway construction. The locations of LG-15, NP-5 (Fir Park), and PP-12 shown on the PDP 3E & PDP 4E Phasing Plan (see Exhibit D) include the areas of proposed ROW vacation. The portions of 110<sup>th</sup> Avenue ROW retained within the site will be incorporated into Stockholm Drive, Berlin Avenue, Villebois Drive N, and SW Costa Circle East, respectively. Vacation of 110<sup>th</sup> Avenue ROW within the subject site is needed to affect the planned change in circulation and to establish the planned parks.



At this time, land development has not been proposed or approved for Tax Lots 700 and 800 on Map 3S1W15. Accordingly, the northern limit of the ROW vacation area is the southern property line of Tax Lot 800. Sufficient area south of the driveway of Tax Lot 800 remains for turnaround purposes.

Compliance with applicable sections of the City of Wilsonville Planning & Land Development Ordinance are addressed in Section II of this Narrative. Section III addresses compliance with the relevant conditions of approval of Casefile No. DB12-0042. Section III addresses compliance with ORS 271.

## **II. WILSONVILLE PLANNING & LAND DEVELOPMENT ORDINANCE**

### **4.031 AUTHORITY OF THE DEVELOPMENT REVIEW BOARD**

(.01) As specified in Chapter 2 of the Wilsonville Code and except as specified herein, the Board shall have authority to act on the following types of applications:

- L. Street vacations, where a specific development application has been filed for the subject property. If no specific development has been filed for the subject property, the vacation request shall be considered by the Planning Commission. Action of the Planning Commission or Board on a street vacation request shall be a recommendation to the City Council.

**Response:** The area of SW 110<sup>th</sup> Avenue to be vacated is within SAP East PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile No. DB12-0053), which were approved on November 12, 2012. The proposed ROW vacation is subject to review by the DRB, which will make a recommendation to City Council.

### **4.033 AUTHORITY OF THE CITY COUNCIL**

(.01) Upon appeal, the City Council shall have final authority to act on all applications filed pursuant to Chapter 4 of the Wilsonville Code, with the exception of applications for expedited land divisions, as specified in Section 4.232. Additionally, the Council shall have final authority to interpret and enforce the procedures and standards set forth in this Chapter and shall have final decision-making authority on the following:

- H. Final actions on street vacation applications.

**Response:** As described above, the proposed street vacation is subject to initial review by the DRB. The Applicant acknowledges that the City Council has final decision-making authority on the proposed ROW vacation.

### **4.034 APPLICATION REQUIREMENTS**

Applications shall be reviewed as follows:

(.07) Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.

**Response:** Compliance with the applicable sections of ORS 271 is addressed in Section IV of this Narrative.



### **III. CONDITIONS OF APPROVAL**

#### **DB12-0042 SAP-EAST PDP 3E, PRELIMINARY DEVELOPMENT PLAN**

**PFA 34.** The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110<sup>th</sup> Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110<sup>th</sup> Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.

**Response:** PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110<sup>th</sup> Avenue will be demolished with roadway construction. Portions of 110<sup>th</sup> Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110<sup>th</sup> Avenue. The Final Plat for the 1<sup>st</sup> phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110<sup>th</sup> Avenue will allow the Applicant to comply with Condition PFA 34.

### **IV. OREGON ADMINISTRATIVE RULE (ORS) 271**

#### **271.080 VACATION IN INCORPORATED CITIES; PETITION; CONSENT OF PROPERTY OWNERS**

- (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.
- (2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street,



but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing.

**Response:** This application is a petition for vacation of portions of SW 110<sup>th</sup> Avenue ROW, as depicted on the attached legal description and sketch (see Exhibit C). This Narrative describes the purpose of the proposed street vacation. Exhibit B includes a copy of the signed petition with an attached map and list that demonstrates the areas of proposed ROW vacation, and the abutting properties and real property affected thereby. The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

#### **271.120 HEARING; DETERMINATION**

At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

**Response:** The Applicant understands that the governing body shall hear the petition and objections, and determine whether the requirements for street vacation have been met. Compliance with ORS 271.080 is addressed above. The signed petition is provided as Exhibit B. A legal description and sketch are provided as Exhibit C.

#### **271.140 TITLE TO VACATED AREAS**

The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the



abutting property on such side. If a public square is vacated the title thereto shall vest in the city.

**Response:** The Applicant understands that the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

#### **271.150 VACATION RECORDS TO BE FILED; COSTS**

A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**Response:** ORS 271.150 addresses the final ordinance procedure and accompanying fee for filing and recording. The Applicant acknowledges that the petitioner bears the recording cost and the cost of preparing and filing the certified copy of the ordinance and map, and will carry out this responsibility at the time when the final ordinance is prepared.

#### **271.190 CONSENT OF OWNERS OF ADJOINING PROPERTY; OTHER REQUIRED APPROVAL**

No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

**Response:** Compliance with ORS 271.080 is addressed above. The area of proposed ROW vacation is not within 5,000 feet of a harbor or pierhead line of a port.

#### **271.200 PETITION; NOTICE**

- (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.
- (2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.



**Response:** This application is a petition to the City to vacate portions of ROW, as depicted on the attached legal description and sketch (see Exhibit C). This Narrative describes the circumstance of the proposed street vacation. A copy of the petition signed by abutting property owners, who are also more than 2/3 of owners of real property affected thereby, and a list of the names of the affected property owners is provided as Exhibit B.

## **V. CONCLUSION**

This narrative and the attached exhibits demonstrate compliance with the applicable provisions of the City of Wilsonville Planning & Land Development Ordinance, relevant conditions of approval, and ORS 271. Therefore, the Applicant respectfully requests approval of the proposed street vacation.

# **EXHIBIT A**

## **Copy of Application**



# CITY OF WILSONVILLE

29799 SW Town Center Loop East

Wilsonville, OR 97070

Phone: 503.682.4960

Fax: 503.682.7025

Web: [www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)

Pre-Application meeting date:

## TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

## Planning Division

### Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

#### Applicant:

Polygon Northwest Company (Fred Gast)

Address: 109 E. 13TH ST., Vancouver, WA 98660

Phone: 360-695-7700

Fax: 360-693-4442

E-mail: [fred.gast@polygonhomes.com](mailto:fred.gast@polygonhomes.com)

#### Authorized Representative:

Pacific Community Design (Stacy Connery)

Address: 12564 SW Main Street, Tigard, Oregon 97223

Phone: 503-941-9484

Fax: 503-941-9485

E-mail: [stacy@pacific-community.com](mailto:stacy@pacific-community.com)

#### Property Owner:

same as applicant

Address:

Phone:

Fax:

E-mail:

#### Property Owner's Signature:

Printed Name: FRED GAST

Date: 11/15/2013

#### Applicant's Signature (if different from Property Owner):

Printed Name:

Date:

#### Site Location and Description:

Project Address if Available: Suite/Unit

Project Location: SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Tax Map #(s): 3 1W 15 Tax Lot #(s): County: ☐ Washington ☒ Clackamas

Request: Vacation of ROW along remaining portions of SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Project Type: Class I ☐ Class II ☐ **Class III** ☒

☒ Residential

☐ Commercial

☐ Industrial

☐ Other (describe below)

#### Application Type:

☐ Annexation

☐ Appeal

☐ Comp Plan Map Amend

☐ Conditional Use

☐ Final Plat

☐ Major Partition

☐ Minor Partition

☐ Parks Plan Review

☐ Plan Amendment

☐ Planned Development

☐ Preliminary Plat

☐ Request to Modify Conditions

☐ Request for Special Meeting

☐ Request for Time Extension

☐ Signs

☐ Site Design Review

☐ SROZ/SRIR Review

☐ Staff Interpretation

☐ Stage I Master Plan

☐ Stage II Final Plan

☐ Type C Tree Removal Plan

☐ Tree Removal Permit (B or C)

☐ Temporary Use

☐ Variance

☐ Villebois SAP

☐ Villebois PDP

☐ Villebois PDP

☐ Waiver

☐ Zone Map Amendment

☒ Other Street Vacation

Exhibit C



# CITY OF WILSONVILLE

29799 SW Town Center Loop East  
Wilsonville, OR 97070  
Phone: 503.682.4960  
Fax: 503.682.7025

Web: [www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)

Pre-Application meeting date:

## Planning Division Development Permit Application

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

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Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

### TO BE COMPLETED BY APPLICANT:

Please PRINT legibly

#### Applicant:

Polygon Northwest Company (Fred Gast)

Address: 109 E. 13TH ST., Vancouver, WA 98660

Phone: 360-695-7700

Fax: 360-693-4442

E-mail: [fred.gast@polygonhomes.com](mailto:fred.gast@polygonhomes.com)

#### Property Owner:

same as applicant

Address:

Phone:

Fax:

E-mail:

#### Authorized Representative:

Pacific Community Design (Stacy Connery)

Address: 12564 SW Main Street, Tigard, OR 97138

Phone: 503-941-9484

Fax: 503-941-9485

E-mail: [stacy@pacific-community.com](mailto:stacy@pacific-community.com)

#### Property Owner's Signature:

Printed Name: Fred Gast

Date: 11/15/2013

#### Applicant's Signature (if different from Property Owner):

Printed Name:

Date:

#### Site Location and Description:

Project Address if Available: Suite/Unit

Project Location: SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Tax Map #(s): 3 1W 15 Tax Lot #(s): County: ☐ Washington ☒ Clackamas

Request: Vacation of ROW along remaining portions of SW 110th Avenue w/in Villebois PDP 3E & PDP 4E

Project Type: Class I ☐ Class II ☐ **Class III** ☒

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☐ Commercial

☐ Industrial

☐ Other (describe below)

#### Application Type:

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☐ Villebois PDP

☒ Other Street Vacation

☐ Comp Plan Map Amend

☐ Minor Partition

☐ Preliminary Plat

☐ Signs

☐ Stage I Master Plan

☐ Temporary Use

☐ Villebois PDP

☐ Conditional Use

☐ Parks Plan Review

☐ Request to Modify Conditions

☐ Site Design Review

☐ Stage II Final Plan

☐ Variance

☐ Waiver

Exhibit C



## **EXHIBIT B**

**Signed Petition, Petition Exhibits & Property  
Ownership Info**

## Street Vacation Petition

This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

### REQUIRED SIGNATURES:

We, the owner in fee simple of the following described real properties consent to the vacation of all that portion of SW 110<sup>th</sup> Avenue, in the City of Wilsonville, Clackamas County, Oregon, as shown on the attached Street Vacation Map, and as described in the application narrative, attached hereto as **Exhibit C**.

- 1) Polygon at Villebois III, LLC

Property Owner's Name

No site address; Reference Parcel 31W15 02916

Property Street Address and Legal Description

No site address; Reference Parcel 31W15 02919

Property Street Address and Legal Description

Signature

01/09/14

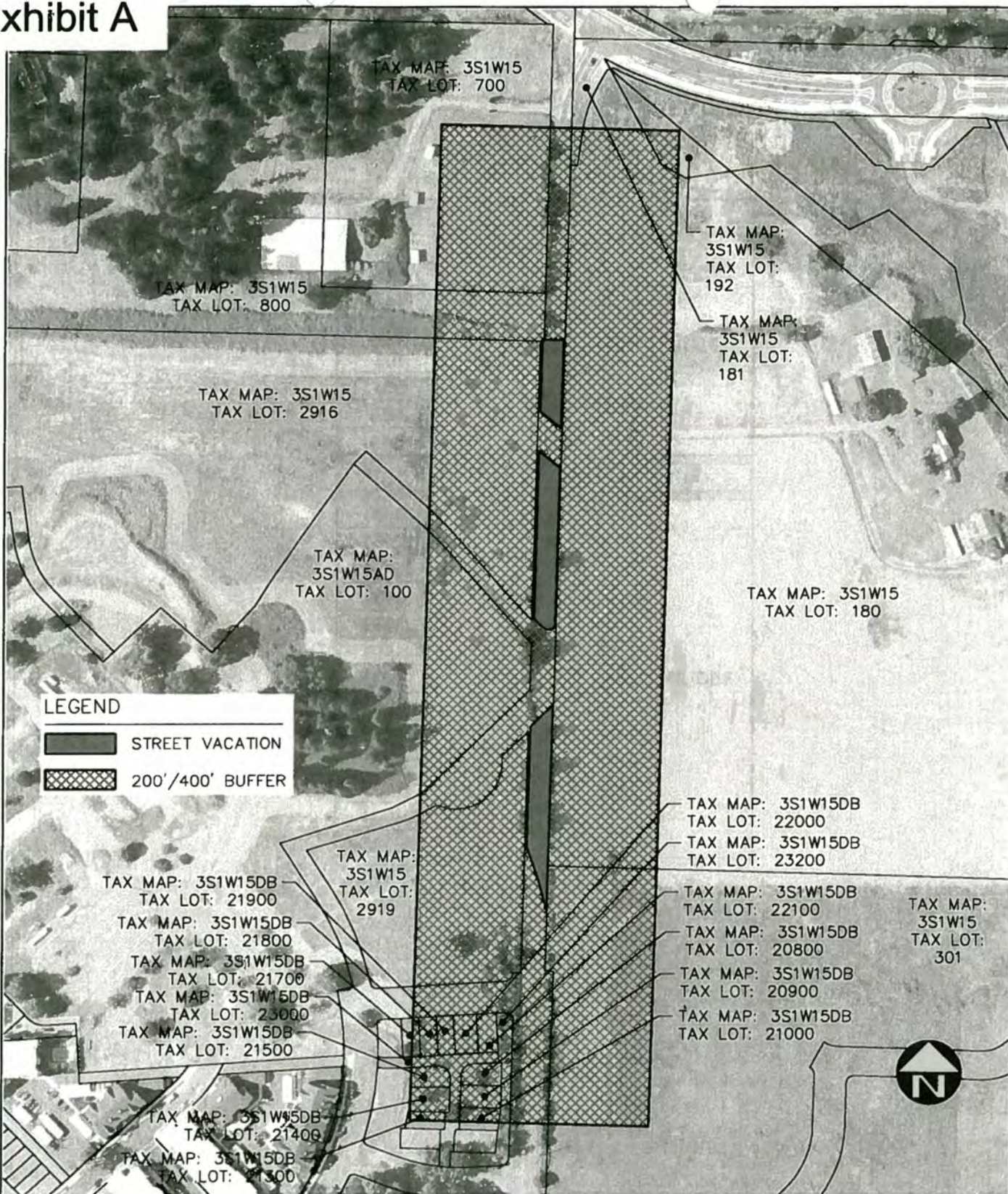
Date

Exhibit C



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legals\395025 Street Vacation Lots.2013.12.12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cll



DRAWN BY: CLL DATE: 12/12/13  
 REVIEWED BY: TCJ DATE: 12/12/13  
 PROJECT NO.: 395-025  
 SCALE: 1"=250'  
 PAGE 1 OF 2



12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485

Exhibit C



TAX MAP	TAX LOT #
3 SOUTH 1 WEST SECTION 15	180
	181
	192
	301
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	2919
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PAGE 2 OF 2



12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485

Exhibit C



# Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRESS	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
31W15 00301	Polygon At Villebois LLC	Polygon At Villebois LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 00181	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15 00192	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15AD00100	Rcs-Villebois Dev LLC	Rcs-Villebois Dev LLC		371 Centennial Pkwy #200	Louisville	CO	80027
31W15 02916	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 02919	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15DB20800	Lorenzo & Laura Young	Lorenzo & Laura	Young	28949 SW Costa Cir E	Wilsonville	OR	97070
31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21000	Julie Helmke	Julie	Helmke	28969 SW Costa Cir E	Wilsonville	OR	97070
31W15DB21300	Sheryl Dischner	Sheryl	Dischner	28962 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21400	James Woodin	James	Woodin	28954 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21500	Austin Joyner	Austin	Joyner	28926 SW Orleans Ave	Wilsonville	OR	97070
31W15DB21700	Juan & Michele Vasquez	Juan & Michele	Vasquez	11124 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB21900	Milian Stewart	Milian	Stewart	11106 SW Mont Blanc St	Wilsonville	OR	97070
31W15DB22000	Judi Campbell	Judi	Campbell	11090 SW Mont Blanc St	Wilsonville	OR	97070
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## Street Vacation Petition

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- 2) Polygon at Villebois V, LLC  
Property Owner's Name

29092 SW 110th Ave, Wilsonville, Oregon 97070; Reference Parcel 31W15 00301  
Property Street Address and Legal Description

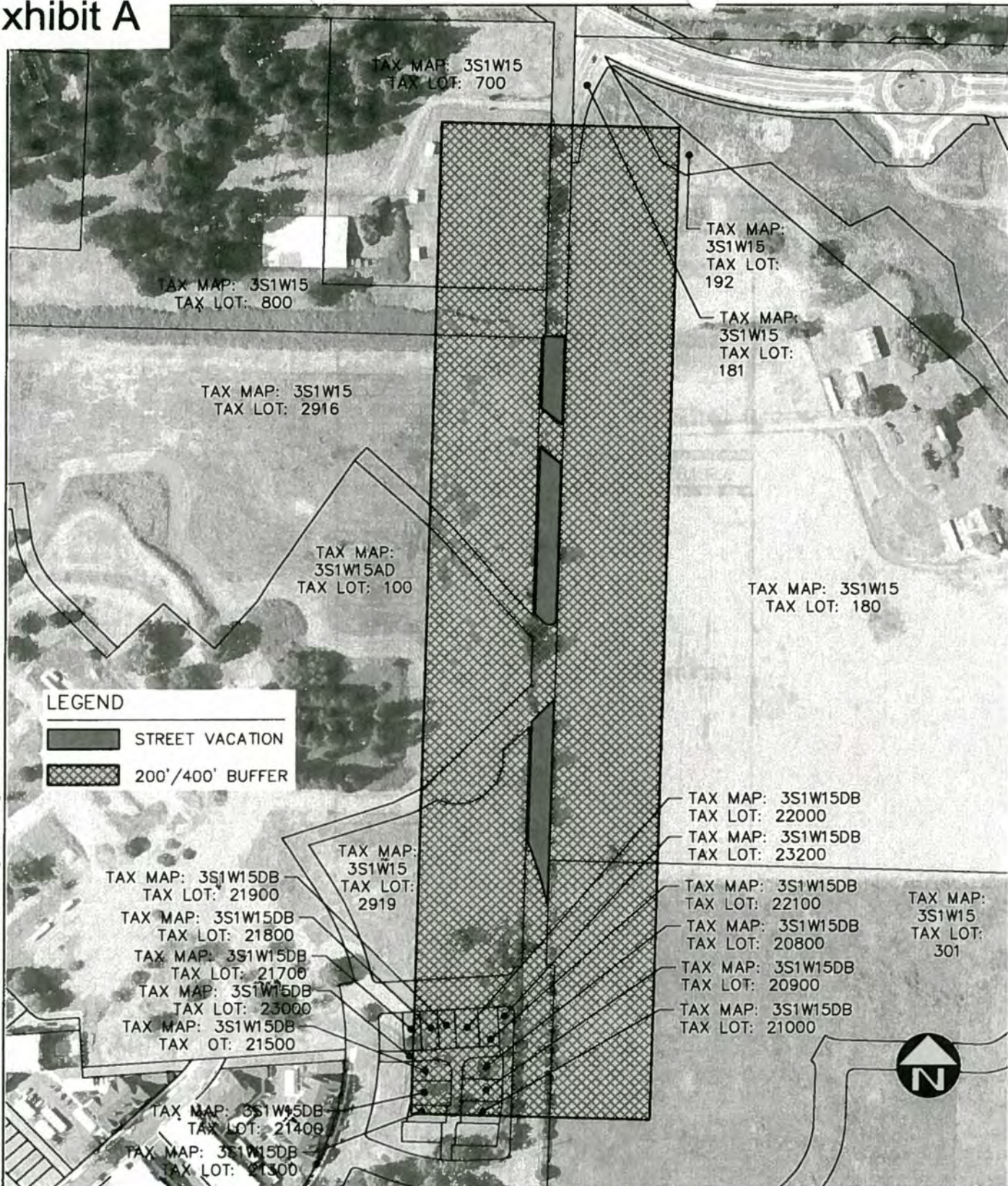
  
Signature

01/09/14  
Date



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legals\395025.Street Vacation Lots.2013-12-12.dwg - SHEET: Legal Desc: Dec. 18, 13 - 10:52 AM cl



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12564 SW Main St  
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Exhibit C



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PAGE 2 OF 2



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 [T] 503-941-9484  
 [F] 503-941-9485

Exhibit C



# Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRESS	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
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31W15DB21800	Daniel Solivan	Daniel	Solivan	11118 SW Mont Blanc St	Wilsonville	OR	97070
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## Street Vacation Petition

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### REQUIRED SIGNATURES:

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3) Donald Bischoff  
Property Owner's Name

No Site Address; Reference Parcel 31W15 00180  
Property Street Address and Legal Description

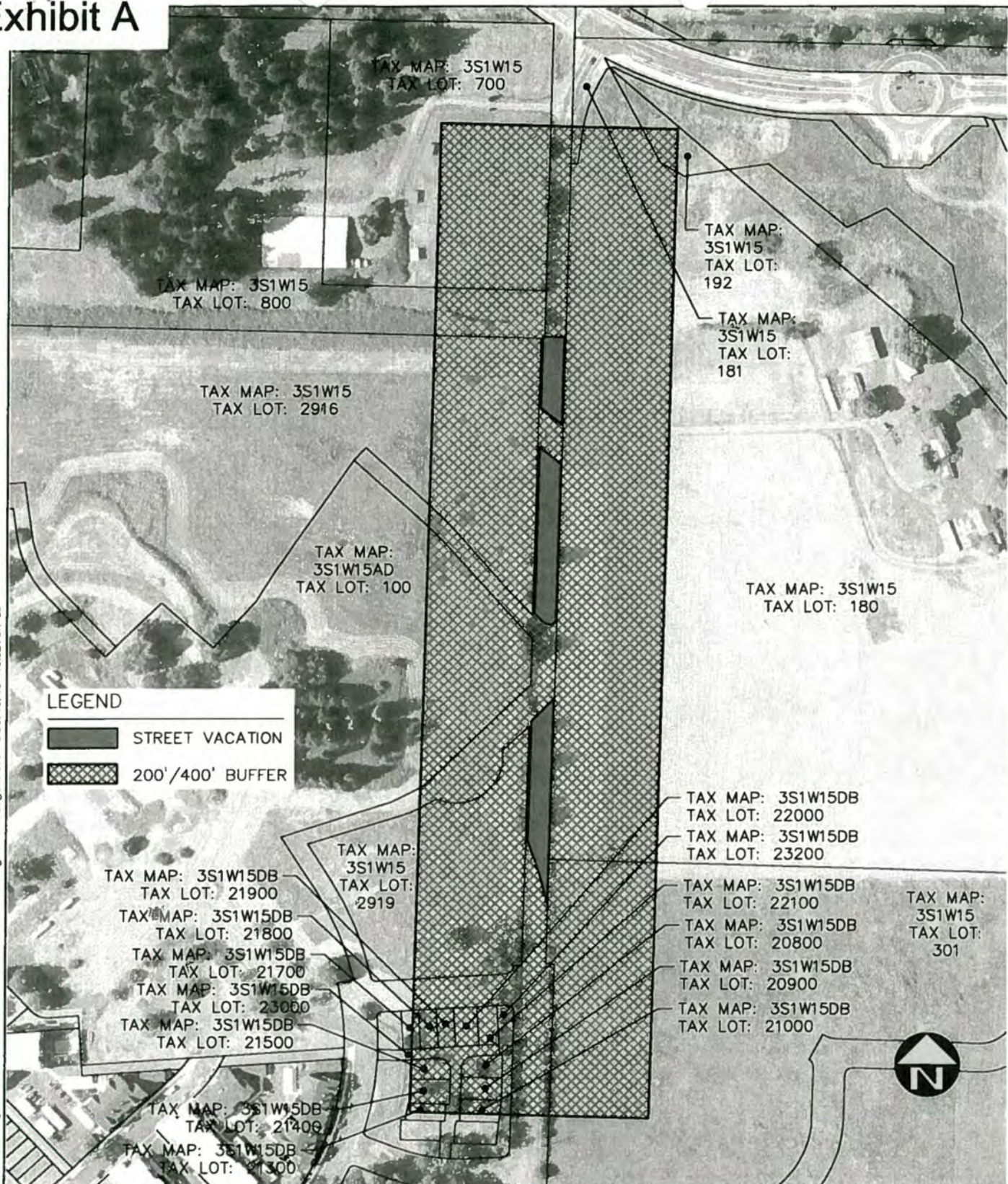
Donald Bischoff  
Signature

12-19-13  
Date



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legals\395025 Street Vacation Lots 2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cll



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12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
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Exhibit C



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Exhibit C



# Exhibit B

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31W15DB23200	Polygon NW at Villebois HOA	Polygon NW at Villebois HOA		1200 NW Naito Pkwy #650	Portland	OR	97209

# **EXHIBIT C**

## **Legal Description & Sketch**



**EXHIBIT A**

December 24, 2013

**LEGAL DESCRIPTION**  
Right-of-Way Vacation

Job No. 395-025

Three tracts of land being portions of SW 110<sup>th</sup> Avenue (County Road No. 355) Right-of-Way located in the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, State of Oregon, more particularly described as follows:

**Tract 1**

BEGINNING at the Northeast corner of Tract "OO", plat of "Tonquin Woods at Villebois No. 4";

thence South 88°24'59" East, a distance of 40.00 feet to a point on the easterly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 166.59 feet;

thence leaving said easterly Right-of-Way line, North 50°46'32" West, a distance of 2.28 feet;

thence along a 770.50 foot radius tangential curve to the right, arc length of 24.11 feet, central angle of 01°47'33", chord distance of 24.10 feet, and chord bearing of North 49°52'45" West;

thence North 48°58'59" West, a distance of 25.04 feet to a point on the westerly Right-of-Way line of said SW 110<sup>th</sup> Avenue;

thence along said westerly Right-of-Way line, North 01°35'01" East, a distance of 134.28 feet to the POINT OF BEGINNING.

Containing 6,024 square feet, more or less.

**Tract 2**

BEGINNING at the most southerly corner of Tract "NN", plat of "Tonquin Woods at Villebois No. 4";

thence along the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue, North 01°35'01" East, a distance of 317.69 feet;

thence leaving said westerly Right-of-Way line, along a 829.50 foot radius non-tangential curve, concave northeasterly, with a radius point bearing North 39°24'48" East, arc length of



2.73 feet, central angle of  $00^{\circ}11'19''$ , chord distance of 2.73 feet, and chord bearing of South  $50^{\circ}40'52''$  East;

thence South  $50^{\circ}46'32''$  East, a distance of 47.79 feet to a point on the easterly Right-of-Way line of said SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South  $01^{\circ}35'01''$  West, a distance of 301.53 feet;

thence leaving said easterly Right-of-Way line, along a 15.00 foot radius non-tangential curve, concave northerly, with a radius point bearing North  $50^{\circ}40'50''$  West, arc length of 24.85 feet, central angle of  $94^{\circ}54'18''$ , chord distance of 22.10 feet, and chord bearing of South  $86^{\circ}46'19''$  West;

thence North  $45^{\circ}46'32''$  West, a distance of 24.44 feet to the POINT OF BEGINNING.

Containing 12,657 square feet, more or less.

### Tract 3

COMMENCING at the most northerly corner of Parcel 2, Partition Plat No. 2010-046;

thence along the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue, South  $01^{\circ}35'01''$  West, a distance of 68.95 feet to the POINT OF BEGINNING;

thence leaving said westerly Right-of-Way line, North  $46^{\circ}43'10''$  East, a distance of 19.16 feet;

thence along a 646.00 foot radius tangential curve to the left, arc length of 38.44 feet, central angle of  $03^{\circ}24'32''$ , chord distance of 38.43 feet, and chord bearing of North  $45^{\circ}00'54''$  East to a point on the easterly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South  $01^{\circ}35'01''$  West, a distance of 388.84 feet;

thence leaving said easterly Right-of-Way line, along a 788.00 foot radius non-tangential curve, concave westerly, with a radius point bearing South  $77^{\circ}24'40''$  West, arc length of 124.82 feet, central angle of  $09^{\circ}04'33''$ , chord distance of 124.69 feet, and chord bearing of North  $17^{\circ}07'37''$  West to a point on the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said westerly Right-of-Way line, North  $01^{\circ}35'01''$  East, a distance of 229.31 feet to the POINT OF BEGINNING.

Containing 12,139 square feet, more or less.

Basis of bearings being plat of "Tonquin Woods at Villebois No. 4", Clackamas County Survey Records.

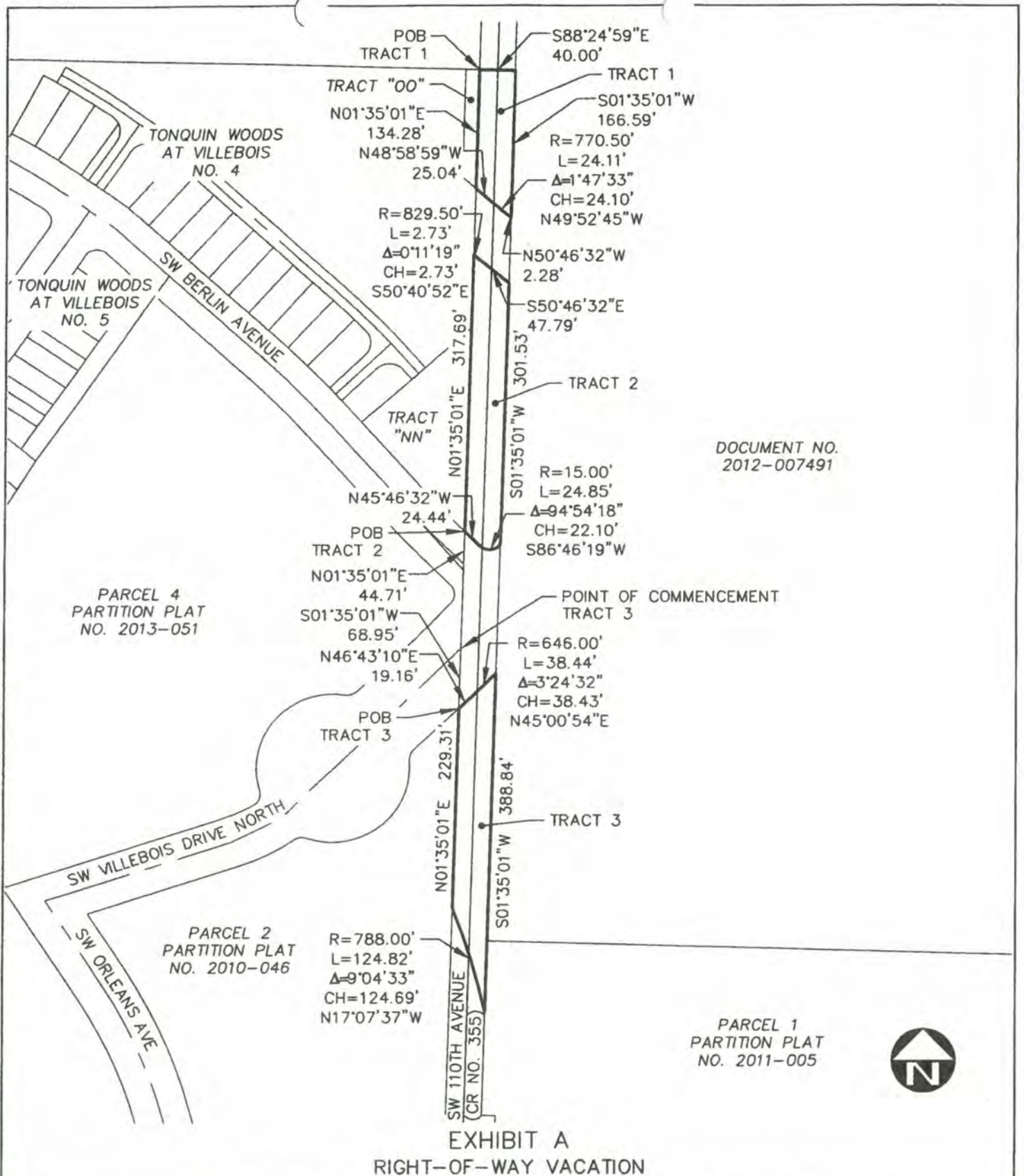
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
JULY 9, 2002  
TRAVIS C. JANSEN  
57751

RENEWS: 6/30/2015





DRAWN BY: CLL DATE: 12/24/13  
 REVIEWED BY: TCJ DATE: 12/24/13  
 PROJECT NO.: 395-025  
 SCALE: 1"=150'  
 PAGE 3 OF 3

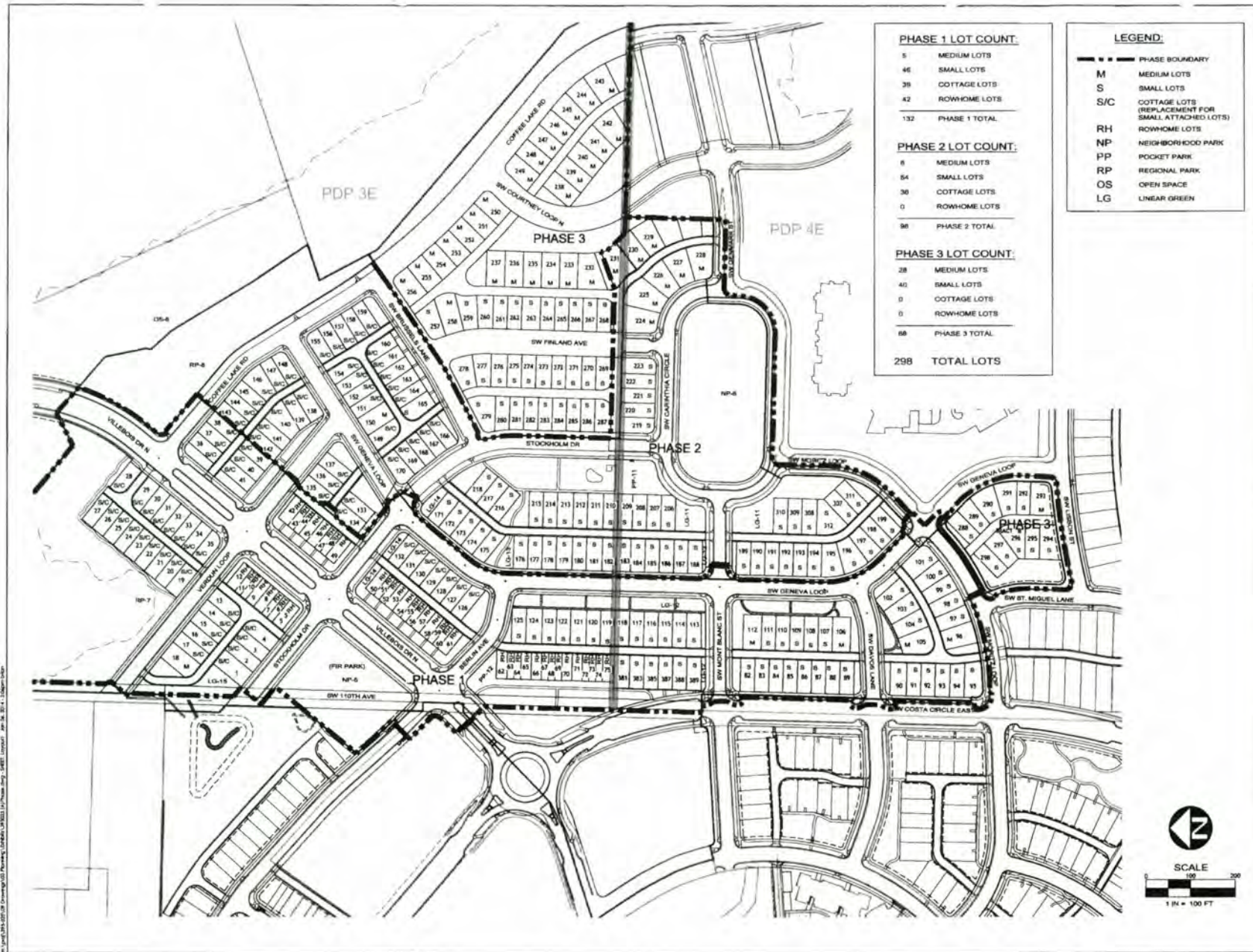


12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485  
 Exhibit C

## **EXHIBIT D**

**Copy of PDP 3E and PDP 4E Phasing Plan**





POLYGON NW COMPANY  
(T) 360-695-7700 (F) 360-693-4442  
WWW.POLYGONHOMES.COM

DATE: 8/12/2013  
**REVISIONS**  
NO. DATE DESCRIPTION

## Tonquin Meadows & Tonquin Meadows No. 2

Phasing Plan



(T) 503-941-9404 (F) 503-941-9485

PROJECT NO.: 395-025  
TYPE: PLANNING  
REVIEWED BY: JJK

A



**EXHIBIT C1  
PLANNING DIVISION  
STAFF REPORT**

**SW 110<sup>th</sup> AVENUE STREET VACATION  
VILLEBOIS SAP EAST PDP 3 AND 4**

**DEVELOPMENT REVIEW BOARD PANEL '\_\_\_',  
QUASI JUDICIAL HEARING**

---

**Public Hearing Date:**

**Date of Report:**

**Application Numbers:**

**Request A: DB14-0001 Vacation OF A Portion of SW  
110<sup>th</sup> Avenue Right-of-Way**

**Property**

**Owners/Applicants:**

PD = Planning Division conditions

BD = Building Division Conditions

PF = Engineering Conditions.

NR = Natural Resources Conditions

TR = SMART/Transit Conditions

FD = Tualatin Valley Fire and Rescue Conditions

**CONDITIONS OF APPROVAL**

- PFA 1.** Concurrently with the 110<sup>th</sup> Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110<sup>th</sup> Avenue prior to its demolition and reconfiguration of the street network.
- PFA 2.** For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum 15-foot wide easements centered on the utility. For private easements they shall be of sufficient width as needed by the private utility and as approved by the City.
- PFA 3.** The future demolition of 110<sup>th</sup> Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.



City of Wilsonville  
Exhibit C1 DB14-0001

Exhibit C



Public Works Plan Review Comments

Plans for Review:  
Issue Date:

110<sup>th</sup> Ave ROW Vacation  
January 16/17, 2014

Return All Comments To:  
Due Date:

Dan Pauly  
January 30, 2014

Name	Page No.	Comments	Engineering's Response
Randy Watson			
Matt Baker		No Comments	
Steve Munsterman		No Comments	
Arnie Gray		No Comments	
Ralph Thorp		Still need to provide water to City irrigation meter at 110 <sup>th</sup> and Tooze. Maybe install new meter at the roundabout?	
Jason Labrie / Steve Gering		No Comments	
Mark Folz / Paul Havens		No Comments	

Page 43 of 43



City of Wilsonville  
Exhibit C2 DB14-0001

Exhibit C

BEFORE THE CITY COUNCIL

FOR THE

CITY OF WILSONVILLE

In the Matter of the Application for	)	
a Stage II Final Plan Revision,	)	
Site Design Review and Master Sign	)	Case Nos.
Plan Revision and Sign Waiver of:	)	DB13-0046 (Stage II Final Plan Revision)
	)	DB13-0047 (Site Plan Review)
WILSONVILLE DEVCO, LLC	)	DB13-0048 (Master Sign Plan Revision and
	)	Sign Waiver)
On property addressed as	)	
25250 SW 95 <sup>th</sup> Avenue and identified as	)	
TL 302, Section 2DB, Township 3 South,	)	<b>OBJECTION TO APPEAL</b>
Range 1 West, Willamette Meridian,	)	
City of Wilsonville, Washington County,	)	
Oregon	)	

COMES NOW, LaPoint Business Group, LLC, by and through its attorney, Wallace W. Lien, of Wallace W. Lien, P.C., and does hereby object to the Appeal filed by the Applicant in this case.

This objection is based on the fact that the Applicant has provided no legal basis for its appeal. The sum total of the appeal is that the Applicant disagrees with the action of the DRB. The Applicant provides no legal or factual argument for why the DRB decision is wrong. Applicant states that the "DRB misapplied and misinterpreted WDC 4.400.02 and 4.421C" but does not say how or in what manner the DRB decision "misapplied" and "misinterpreted" the approval criteria.

Further, under "Reasons for Appeal" the Applicant again simply disagrees with the DRB decision without providing any legal or factual justification for its appeal. Applicant asserts it has demonstrated adequate internal vehicle circulation, but provides no support for that position other than a staff report done before the DRB decision was made. In fact, what the DRB had in front of it when it made its decision was several video's of the on-site traffic circulation showing accidents



and chaotic vehicular movements in addition to extensive testimony about the vast problems associated with the current circulation. Adding additional traffic for a coffee kiosk would only exacerbate an already unworkable situation. The DRB, after reviewing all the evidence and the approval criteria, made a nearly unanimous decision that modification of this site plan to remove the office building and replace it with a coffee kiosk was not appropriate or in compliance with the approval criteria.

It is insufficient for an appeal to singularly rely on a staff report that was essentially rejected by the DRB based on other evidence, without providing some additional factual or legal justification for why the DRB decision was legally wrong. The fact that the Applicant disagrees with the DRB is not enough to warrant an appeal, and the appeal should be rejected as incomplete and insufficient to warrant consideration by the City Council.

Applicant has played hide and seek with the facts in this case throughout. The proposed site plan has been modified, delivery locations are moved like chess pieces, and pedestrian and bicycle access have been located and relocated as the case has progressed through the City. If the Applicant is allowed to file a generic, non-specific appeal, it will simply be another tactic to hide the ball, and spring on both the City Council, staff and my client, what the Applicant's real justification for the appeal is, if in fact there even is one. This tactic will simply lead to continuation of the hearing in order to allow all parties to properly prepare and rebut whatever the hidden rationale for this appeal is. The land use process is intended to be open and fair, and the Applicant's tactics to hide the ball should not be allowed.

The appeal should be denied as legally insufficient in not stating with any particularity why the DRB decision is incorrect. In the event the appeal is accepted a hearing scheduled, the Applicant

should be required to state in writing at least 14 days before any scheduled hearing, the reasons for the appeal with sufficient specificity so that staff and my client understand the reasons for the appeal and can be prepared to defend the actions of the DRB.

DATED this 28th day of February, 2014.

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Wallace W. Lien, OSB 79-3011  
Attorney for LaPoint Business Group, LLC



King, Sandy

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**From:** Kohlhoff, Mike  
**Sent:** Wednesday, February 19, 2014 6:03 PM  
**To:** King, Sandy; Pauly, Daniel  
**Subject:** ORD 736 Auth Vac 3 Portiosn of 110th (mk^)  
**Attachments:** ORD 736 Auth Vac 3 Portiosn of 110th (mk^).doc

Sandy,

Here is Ordinance 736 as I have redrafted. I would ask Dan to look at it for any comments he may have. I may take a look again tomorrow for any fine tuning. I am out re a Water meeting in the am. Note, you will need to have an affidavit of publishing on file as well as an affidavit of posting the notice in accordance with ORS 271.110.

Mike





King, Sandy

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**From:** King, Sandy  
**Sent:** Thursday, February 20, 2014 8:56 AM  
**To:** Baker, Barbara; Duke, Pat; Lawhead, Judy  
**Subject:** Hearing notice posting  
**Attachments:** Ord736.docx

Please print and post the attached hearing notice on your public bulletin boards.

Many thanks.

Sandra C. King, MMC  
City Recorder  
City of Wilsonville  
29799 SW Town Center Loop East  
Wilsonville, OR 97070  
503-570-1506

PUBLIC RECORDS LAW DISCLOSURE: Messages to and from this e-mail address is a public record of the City of Wilsonville and may be subject to public disclosure. This e-mail is subject to the State Retention Schedule.

**CITY OF WILSONVILLE  
CITY COUNCIL  
NOTICE OF PUBLIC HEARING**

**PUBLIC NOTICE IS HEREBY GIVEN** that the Wilsonville City Council will conduct a public hearing on March 3, **2014**, 7 p.m. at City Hall, 29799 SW Town Center Loop, Wilsonville, Oregon.

The purpose of this public hearing is to consider public testimony on a proposed ordinance entitled:

**AN ORDINANCE OF THE CITY OF WILSONVILLE DECLARING AND AUTHORIZING THE VACATION OF THREE (3) PORTIONS OF SW 110<sup>th</sup> AVENUE PUBLIC STREET RIGHT-OF-WAY BETWEEN SW MONT BLANCE STREET AND SW TOOZE ROAD/SW BOECKMAN ROAD IN VILLEBOIS LEGALLY DESCRIBED IN ATTACHMENT C**

Copies may be obtained at a cost of 25 cents per page, at City Hall or by calling the City Recorder at 503-570-1506 and requesting a copy to be mailed to you.

Specific suggestions or questions concerning the proposed ordinance may be directed to Dan Pauly, at 503-570-1536. Public testimony, both oral and written will be accepted at the public hearing. Written statements are encouraged and may be submitted to Sandra C. King, MMC, City Recorder, 29799 SW Town Center Loop E, Wilsonville, OR 97070.

Assistive listening devices are available for persons with impaired hearing and can be scheduled for this meeting. The City will endeavor to provide qualified sign language interpreters without cost if requested at least 48 hours prior to the meeting. To obtain such services call the office of the City Recorder at 682-1011.

Published in the Wilsonville Spokesman March 26, 2014.



King, Sandy

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**From:** King, Sandy  
**Sent:** Thursday, February 20, 2014 7:52 AM  
**To:** 'LFaxon@CommNewspapers.com'  
**Subject:** Public Hearing Notice  
**Attachments:** Ord736.docx

Louise,

Can you publish the attached public hearing notice in the February 26, 2014 edition of the Spokesman and send proof of publication.

Many thanks.

Sandra C. King, MMC  
City Recorder  
City of Wilsonville  
29799 SW Town Center Loop East  
Wilsonville, OR 97070  
503-570-1506

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**CITY OF WILSONVILLE  
CITY COUNCIL  
NOTICE OF PUBLIC HEARING**

**PUBLIC NOTICE IS HEREBY GIVEN** that the Wilsonville City Council will conduct a public hearing on **March 3, 2014**, 7 p.m. at City Hall, 29799 SW Town Center Loop, Wilsonville, Oregon.

The purpose of this public hearing is to consider public testimony on a proposed ordinance entitled:

**Ordinance No. 736, AN ORDINANCE OF THE CITY OF WILSONVILLE DECLARING AND AUTHORIZING THE VACATION OF THREE (3) PORTIONS OF SW 110<sup>th</sup> AVENUE PUBLIC STREET RIGHT-OF-WAY BETWEEN SW MONT BLANCE STREET AND SW TOOZE ROAD/SW BOECKMAN ROAD IN VILLEBOIS LEGALLY DESCRIBED IN ATTACHMENT C**

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Published in the Wilsonville Spokesman March 26, 2014.



**PUBLIC NOTICE  
CITY OF WILSONVILLE**

***DEVELOPMENT REVIEW BOARD PANEL A and CITY COUNCIL***

NOTICE IS HEREBY GIVEN that a PUBLIC HEARING will be held by the **Development Review Board (DRB)** of the City of Wilsonville on **Monday, February 10, 2014 at 6:30 P.M.** at City Hall, at 29799 SW Town Center Loop E, Wilsonville, Oregon, or to such other place to which the Development Review Board may adjourn.

NOTICE IS HEREBY GIVEN that a PUBLIC HEARING will be held by the **City Council** of the City of Wilsonville on **Monday, March 3, 2014 at 7:00 P.M.** at City Hall, at 29799 SW Town Center Loop E, Wilsonville, Oregon, or to such other place to which the City Council may adjourn.

**CASE FILES TO BE  
CONSIDERED:**

DB14-0001 SW 110<sup>th</sup> Avenue Street Vacation

**APPLICANT/  
PETITIONER:**

Polygon Northwest Company

**DATE PETITION  
TO VACATE FILED:**

January 6, 2014

**APPLICANT'S  
REPRESENTATIVES:**

Pacific Community Design

**CITY CONTACT:**

Daniel Pauly AICP, Associate Planner, at (503) 682-4960.

**REQUEST:**

City vacate (abandon its ownership interest in) portions of the SW 110<sup>th</sup> Avenue right-of-way between SW Mont Blanc Street and SW Tooze/Boeckman Road. The north-south connectivity of SW 110<sup>th</sup> Avenue is planned be replaced by a new segment of SW Villebois Drive North previously approved by the City. The portions of the street right-of-way being vacated would, according to state law, be owned by the adjacent property owners.

**APPLICABLE CRITERIA**

**Planning and Land Development Ordinance:** Section 4.008, Section 4.009, Section 4.010, Section 4.011, Section 4.014, Subsection 4.031 (.01) L., Subsection 4.032 (.01) D., Subsection 4.033 (.01) H., Subsection 4.034 (.07) **Other Planning Documents:** Transportation Systems Plan, Villebois Village Master Plan, SAP East Approval Documents, including PDPs and FDPs for PDP 3 and 4 East **Oregon Revised Statutes:** ORS 271.080 through ORS 271.170.

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**PUBLIC HEARING NOTICE FOR HEARINGS FEBRUARY 10 AND MARCH 3, 2014**

Wilsonville Development Review Board Panel 'A' and Wilsonville City Council  
Notice Date: January 21, 2014



---

Copies of the approval criteria are available from the Wilsonville Planning Division, located at 29799 SW Town Center Loop East. All testimony and evidence shall be directed to the applicable criteria or the person providing testimony shall state which other criteria they believe applies to this application. A complete copy of the relevant file information, including the staff report and recommendations, will be available for inspection seven days prior to the hearing. Copies may be provided at the cost of twenty-five cents per page. Copies will also be available for review at the Wilsonville Public Library.

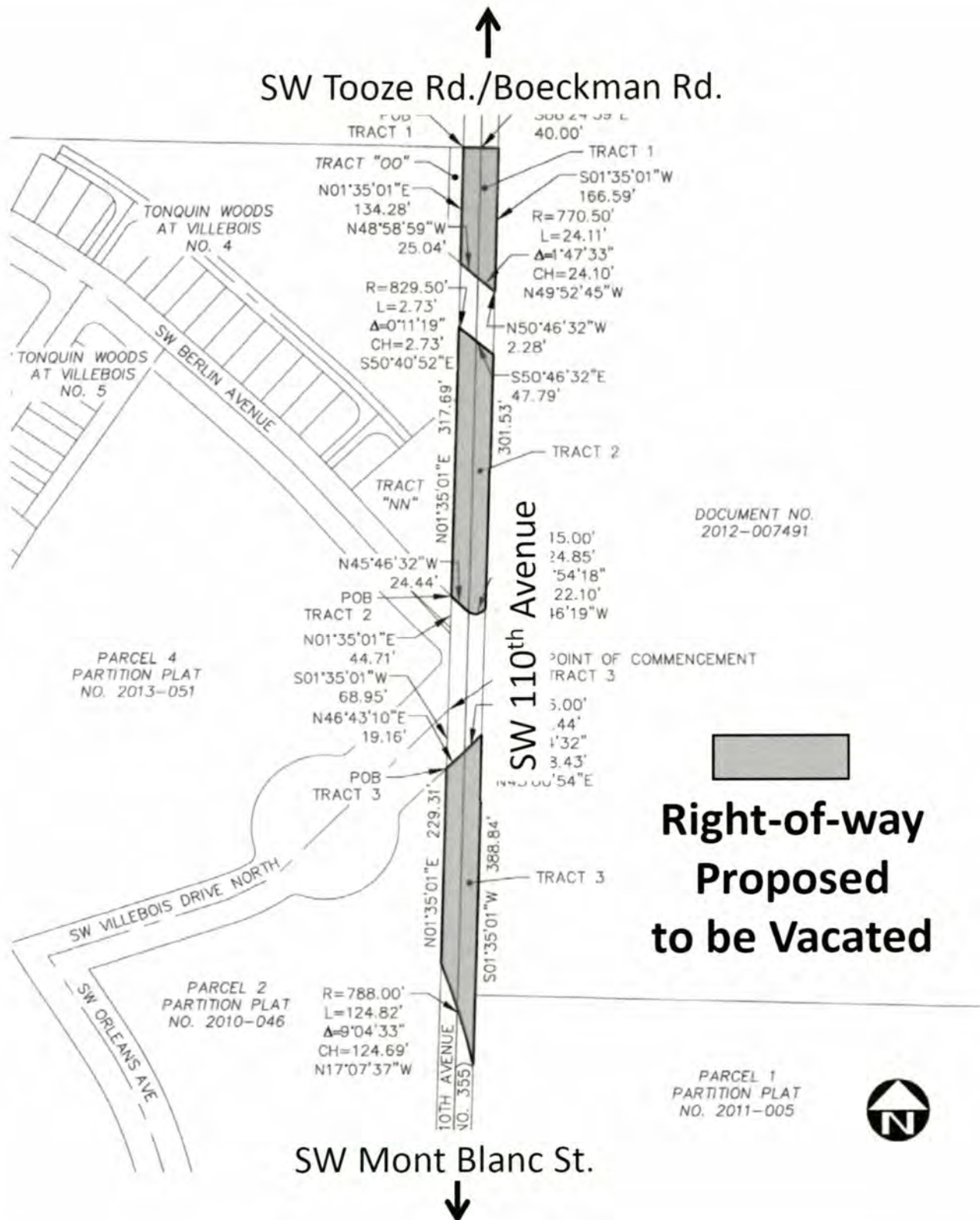
Any interested party may testify at the public hearing or submit written testimony at or prior to the hearing. **Written comments must be received at City Hall by January 31, 2014, to be included in the staff report.** Mail written statements to City Planning Division, 29799 SW Town Center Loop East, Wilsonville OR 97070 or email to Associate Planner: Daniel Pauly [pauly@ci.wilsonville.or.us](mailto:pauly@ci.wilsonville.or.us). The procedures that govern the hearing will be stated at the meeting and are found in Chapter 2.560 of the Wilsonville Code and ORS 197.763.

Please be advised that any issue that is intended to provide a basis for appeal must be raised before the close of the Development Review Board hearing, in person or by letter, with sufficient specificity to afford the Development Review Board and the parties an opportunity to respond to the issue. Failure to raise an issue with sufficient specificity will preclude any appeal on that issue. Parties with standing may appeal the decision of the Development Review Board to the City Council.

Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting. The City will also endeavor to provide qualified sign language interpreters and/or qualified bilingual interpreters, without cost, if requested at least 48 hours prior to the meeting. To obtain such services, please call Shelley White, Planning Administrative Assistant at (503) 682-4960.

Inquiries pertaining to these hearings may be made to Daniel Pauly, AICP, Associate Planner at (503) 682-4960.





**PUBLIC HEARING NOTICE FOR HEARINGS FEBRUARY 10 AND MARCH 3, 2014**

Wilsonville Development Review Board Panel 'A' and Wilsonville City Council

Notice Date: January 21, 2014

**EXPLANATION OF PUBLIC HEARING NOTICE  
BEFORE THE DEVELOPMENT REVIEW BOARD AND CITY COUNCIL  
AND OPPORTUNITY TO COMMENT ON PROPOSED STREET VACATION  
Vacation of Portions of SW 110<sup>th</sup> Avenue Right-of-Way in Villebois**

---

*This notice informs you of your opportunity to comment on the proposal for the City to vacate (abandon its ownership interest in) portions of SW 110<sup>th</sup> Avenue between SW Mont Blanc Avenue and SW Tooze/Boeckman Road.*

Comments are encouraged to address specific criteria established in City Code, Planning Documents, and State Law related to street vacation. A list of criteria applicable to review of the street vacation can be found in the attached Notice of Public Hearing.

You can provide comments by submitting them in writing, or by testifying in person at the Public Hearings

**Frequently Asked Question about Providing Written Comments:**

**To whom should I address my written comments?**

Please address comments to "Development Review Board Members/City Council"

**How do I submit written comments?**

Email is best. Comments can be emailed to the Planning Staff Member reviewing the application. Daniel Pauly, at pauly@ci.wilsonville.or.us . They can also be mailed to :Planning Division, Attn: Daniel Pauly, 29799 SW Town Center Loop East, Wilsonville, OR 97070 or delivered in person 8:00 to 5:00 on days City Hall is opened (typically Mon-Fri) at the address above.

**When should written comments be submitted?**

- For comments to be considered in preparing the staff report and to be sent to the DRB (and subsequently to City Council) for their review prior to the Public Hearings they must be received by City Staff no later than 4 p.m. on January 31, 2014.
- For staff to prepare copies of the comments for the DRB hearing they must be received no later than 2 p.m. on February 10, 2014.
- For staff to prepare copies of the comments for the DRB or City Council hearing they must be received no later than 2 p.m. on the day of the hearing.
- You can bring your own copies to the Public Hearings to present when you testify if you do not meet the deadlines above.

**Where and When to come to attend or testify at the Public Hearing**

**WHERE (Public Hearing):** City Hall Council Chambers, 29799 SW Town Center Loop East, Wilsonville, OR 97070

<b>WHEN:</b> Development Review Board	February 10, 2014 at 6:30 p.m.
City Council	March 3, 2014 at 7:00 p.m.

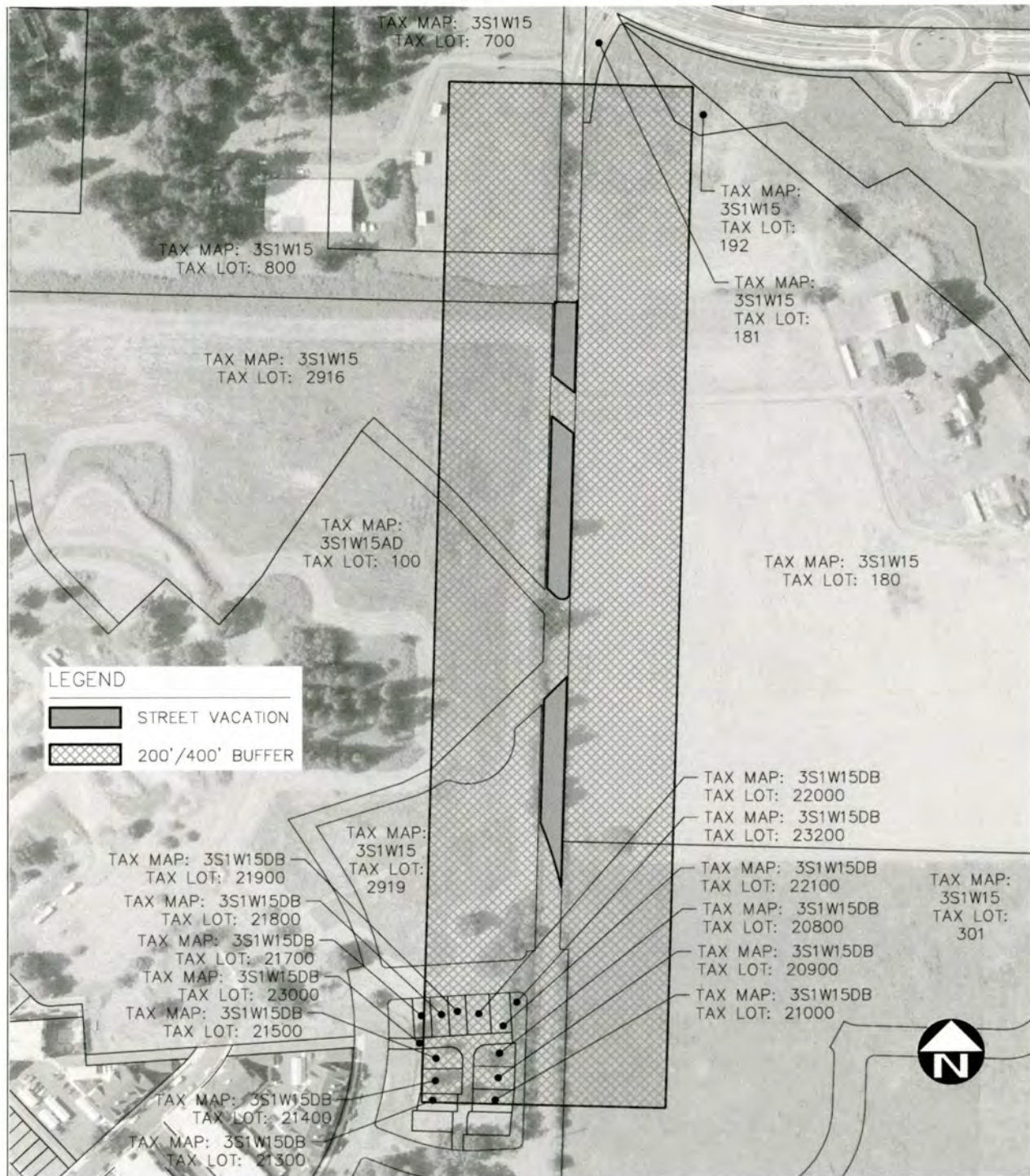
City Case File for Application: DB14-0001

**PUBLIC HEARING NOTICE FOR HEARINGS FEBRUARY 10 AND MARCH 3, 2014**

Wilsonville Development Review Board Panel 'A' and Wilsonville City Council

Notice Date: January 21, 2014





**PUBLIC HEARING NOTICE FOR HEARINGS FEBRUARY 10 AND MARCH 3, 2014**

Wilsonville Development Review Board Panel 'A' and Wilsonville City Council

Notice Date: January 21, 2014



**DEVELOPMENT REVIEW BOARD  
RESOLUTION NO. 269**

**A RESOLUTION ADOPTING FINDINGS RECOMMENDING APPROVAL OF A REQUEST FOR THE CITY TO VACATE PORTIONS OF SW 110<sup>TH</sup> AVENUE BETWEEN SW MONT BLANC AVENUE AND SW TOOZE/BOECKMAN ROAD. STACY CONNERY, AICP, PACIFIC COMMUNITY DESIGN, INC. – REPRESENTATIVE FOR FRED GAST, POLYGON NW COMPANY- APPLICANT/PETITIONER.**

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code, and

WHEREAS, the Planning Staff has prepared staff report on the above-captioned subject dated February 3, 2014, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on February 10, 2014, at which time exhibits, together with findings and public testimony were entered into the public record, and

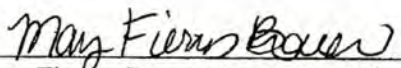
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby adopt the staff report dated February 3, 2014, attached hereto as Exhibit A1, with findings and recommendations contained therein as a recommendation to the City of Wilsonville City Council:

DB14-0001 Quasi-judicial Street Vacation of Portions of SW 110<sup>th</sup> Avenue.

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 10<sup>th</sup> day of February, 2014 and filed with the Planning Administrative Assistant on February 11, 2014

  
Mary Fierros-Bower, Chair, Panel A  
Wilsonville Development Review Board

Attest:

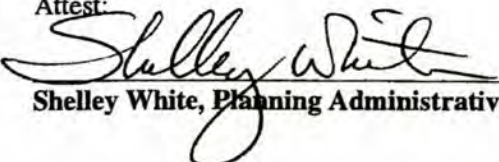
  
Shelley White, Planning Administrative Assistant



Exhibit A1  
**STAFF REPORT**  
**WILSONVILLE PLANNING DIVISION**

*SW 110th Avenue Street Vacation, PDP 3 and 4 East*  
*"Tonquin Meadows"*

**DEVELOPMENT REVIEW BOARD PANEL 'A'**  
**QUASI-JUDICIAL PUBLIC HEARING FOR STREET VACATION**  
**STAFF REPORT**

<b>HEARING DATE</b>	February 10, 2014
<b>DATE OF REPORT:</b>	February 3, 2014
<b>APPLICATION NO.:</b>	DB14-0001 Vacation of a Portion of SW 110th Avenue Right-of-Way
<b>REQUEST/SUMMARY:</b>	The Development Review Board is being asked to review a Quasi-judicial Street Vacation
<b>LOCATION:</b>	Portions of SW 110 <sup>th</sup> Avenue between SW Mont Blanc Street and SW Tooze Road/SW Boeckman Road.
<b>ADJACENT PROPERTY OWNERS:</b>	Donald E. Bischoff and Sharon L. Lund (Tax Lot 180) Polygon at Villebois III LLC (Tax Lots 2916 and 2919) Polygon at Villebois V LLC (Tax Lot 301)
<b>PETITIONER:</b>	Fred Gast, Polygon NW Company
<b>APPLICANT'S REP.:</b>	Stacy Connery, AICP, Pacific Community Design, Inc.
<b>COMPREHENSIVE PLAN MAP DESIGNATION:</b>	Residential-Village
<b>ZONE MAP CLASSIFICATIONS:</b>	V (Village)
<b>STAFF REVIEWERS:</b>	Daniel Pauly AICP, Associate Planner Steve Adams PE, Development Engineering Manager
<b>STAFF RECOMMENDATION:</b>	<b><u>Recommend approval with Conditions</u></b> of the requested Street Vacation to City Council.

## APPLICABLE REVIEW CRITERIA

<b><u>DEVELOPMENT CODE</u></b>	
Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Subsection 4.031 (.01) L.	Authority of the Development Review Board: Street Vacations
Subsection 4.032 (.01) D.	Authority of the Planning Commission: Street Vacations
Subsection 4.033 (.01) H.	Authority of the City Council: Street Vacations
Subsection 4.034 (.07)	Street Vacation Review Standards and Procedures
<b><u>OTHER PLANNING DOCUMENTS</u></b>	
Villebois Village Master Plan	
Transportation Systems Plan	
SAP East Approval Documents	
PDP 3 East Approval Documents	
PDP 4 East Approval Documents	
<b><u>OREGON REVISED STATUTES</u></b>	
ORS 271.080	Vacation in incorporated cities; petition; consent of property owners.
ORS 271.120	Vacation hearing; determination.
ORS 271.140	Title to vacated areas.
ORS 271.150	Vacation records to be filed; costs.
ORS 271.190	Vacation consent of owners of adjoining properties; other required approval.
ORS 271.200	Vacation Petition; notice

## BACKGROUND/SUMMARY:

SW 110<sup>th</sup> Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110<sup>th</sup> and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110<sup>th</sup> Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110<sup>th</sup> Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East. The proposed vacation allows the conversion of much of the remainder of SW 110<sup>th</sup> Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110<sup>th</sup> Avenue will remain to provide access to a property on the west side of SW 110<sup>th</sup> just south of SW Tooze Road not yet proposed for development. The north-south

Development Review Board Panel 'A' Staff Report February 3, 2014  
Vacation of Portions of SW 110<sup>th</sup> Avenue

Exhibit A1



connectivity of SW 110<sup>th</sup> Avenue will be replaced by a new segment of SW Villebois Drive North which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman bridge. The demolition of SW 110<sup>th</sup> and construction of the new SW Villebois Drive North segment is currently planned later this year together with Polygon Homes construction of a new subdivision previously approved.



#### CONCLUSION AND CONDITIONS OF APPROVAL:

Staff has reviewed the applicant's analysis of compliance with the applicable criteria. This Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, staff recommends that the Development Review Board recommend approval of the proposed application (DB14-0001) to City Council with the following conditions:

##### **Conditions:**

- |  |
|--|
| <p><b>PF 1.</b> Concurrently with the 110th Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110th Avenue prior to its demolition and reconfiguration of the street network.</p> <p><b>PF 2.</b> For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum</p> |
|--|



	15-foot wide easements centered on the utility. For private easements they shall be of sufficient width as needed by the private utility and as approved by the City.
<b>PF 3.</b>	The future demolition of 110th Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.

#### **MASTER EXHIBIT LIST:**

The following exhibits are hereby entered into the public record by the Development Review Board as confirmation of its consideration of the application as submitted. This is the exhibit list that includes exhibits for Planning Case File DB14-0001.

- A1.** Staff report and findings (this document)
- A2.** Staff's Slide Presentation (available at public hearing)
- B1.** Applicant's Submitted Materials
  - Narrative
  - Copy of Application Form
  - Signed Petition, Petition Exhibits & Property Ownership Info
  - Legal Description and Sketch
  - Copy of PDP 3E & 4E Phasing Plan
- C1.** Comments and Conditions from Engineering Division
- C2.** Comments from Public Works Department

#### **FINDINGS OF FACT:**

1. Prior land use actions include:

##### Legislative:

02PC06 - Villebois Village Concept Plan  
 02PC07A - Villebois Comprehensive Plan Text  
 02PC07C - Villebois Comprehensive Plan Map  
 02PC07B - Villebois Village Master Plan  
 02PC08 - Village Zone Text  
 04PC02 - Adopted Villebois Village Master Plan  
 LP-2005-02-00006 - Revised Villebois Village Master Plan  
 LP-2005-12-00012 - Revised Villebois Village Master Plan (Parks and Recreation)  
 LP13-0005 - Revised Villebois Village Master Plan

##### Quasi Judicial:

04 DB 22 et seq - SAP-East  
 DB12-0042 et seq - PDP-3E Tonquin Meadows  
 DB12-0050 et seq - PDP-4E Tonquin Meadows No. 2  
 DB13-0013 et seq - PDP-4C Polygon Northwest at Villebois No. 2  
 AR13-0046 PDP 3 and 4 East Phasing Amendment



2. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.

## **CONCLUSIONARY FINDINGS:**

### **Planning and Land Development Ordinance**

#### ***Subsections 4.031 (.01) L., 4.032 (.01) D., Subsection 4.033 (.01) H. Authority to Review Street Vacations***

1. **Review Criteria:** These subsections define the roles of the Development Review Board, the Planning Commission, and City Council for street vacations. The Development Review Board is authorized to make recommendations to City Council for street vacations where a specific development application has been filed for the subject property. The Planning Commission is authorized to make recommendations to City Council for street vacations where no specific development application has been filed for the subject property. City Council takes final action on street vacation applications.

**Finding:** These criteria are satisfied.

**Details of Finding:** Specific development applications have been filed and approved by the City for the land being vacated subject to approval of the street vacation. The land is approved to be development as private park space. See case files DB12-0042 (Preliminary Development Plan, Villebois Phase 3 East), DB12-0048 (Final Development Plan for Parks and Open Space, Villebois Phase 3 East), DB12-0050 (Preliminary Development Plan, Villebois Phase 4 East), and DB12-0054 (Final Development Plan for Parks and Open Space, Villebois Phase 4 East). Due to the previous submission of specific development application for the subject land, the Development Review Board is reviewing the street vacation to make a recommendation to City Council. The City Council will then take the final action on the request.

#### ***Subsection 4.034 (.07) Standards for Street Vacation***

2. **Review Criteria:** "Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.

**Finding:** These criteria are satisfied.

**Details of Finding:** As shown in Findings 9 -16 below, the request is being reviewed in accordance with ORS 271.

### **Previous Land Use Approvals**

#### ***DB12-0042 SAP-East PDP 3E, Preliminary Development Plan, Condition of Approval PFA 34.***

3. **Review Criteria:** "The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110th Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110th Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.”

**Finding:** These criteria are satisfied.

**Details of Finding:** PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110th Avenue will be demolished with roadway construction. Portions of 110th Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110th Avenue. The Final Plat for the 1st phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110th Avenue will allow the Applicant to comply with Condition PFA 34.

### **Transportation Systems Plan**

**Table 5-4. Higher Priority Projects (Southwest Quadrant) Roadway Extensions**

4. **Review Criteria:**

RE-09	Villebois Drive Extension	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Costa Circle to Coffee Lake Drive	\$390,000
RE-10	Villebois Drive Extension (Part 2)	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Coffee Lake Drive to Boeckman Road	\$250,000

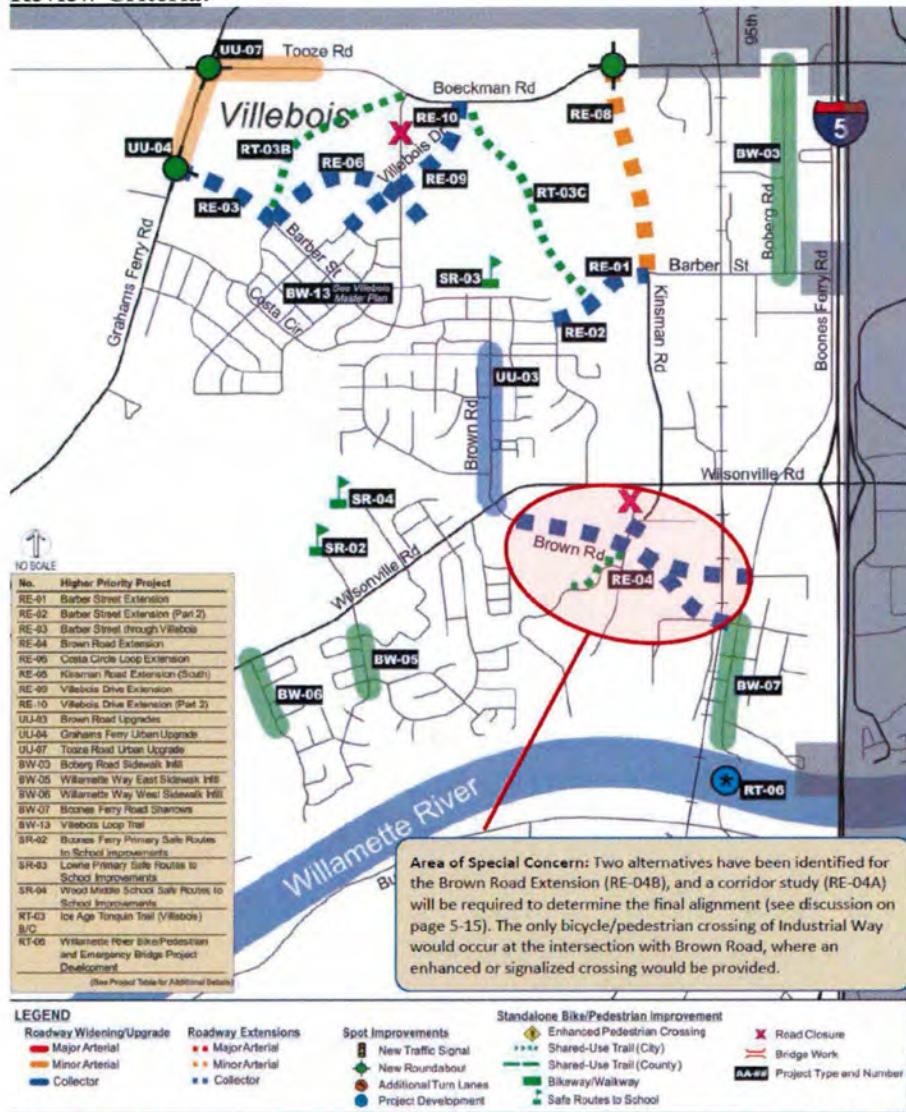
**Finding:** These criteria are satisfied.

**Details of Finding:** The listed extensions of Villebois Drive in the Transportation System Plan are planned to be constructed as part of Construction Phase 1 of PDP 3 and 4 East as shown in the phasing plan approved in Case File AR13-0046, and will replace the north-south connectivity between Villebois and SW Boeckman Road/SW Tooze Road.



**Figure 5-5. Higher Priority Projects (Southwest Quadrant)**

5. **Review Criteria:**



**Finding:** This criterion is satisfied.

**Details of Finding:** The closure of SW 110<sup>th</sup> is shown by the red "X" in Figure 5-5 in association with projects RE-09 and RE-10, extension of SW Villebois Drive.

Villebois Village Master Plan

*Figure 5B Parks and Open Space Categories*

6. Review Criteria:

Figure 5B



**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show the intention for the portions of SW 110<sup>th</sup> being vacated to become private parks.



Figure 7 Street Plan

7. Review Criteria:



**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show how SW 110<sup>th</sup> is not planned as part of the circulation and street system in the Villebois Village Master Plan.

**Figure 8. Proposed Arterial and Collector System**

8. **Review Criteria:**

Figure 8



**Finding:** This criterion is satisfied.

**Details of Finding:** Figure 8 of the Villebois Village Master Plan shows SW 110<sup>th</sup> Avenue as an “Existing street replaced by the Villebois Circulation Plan.”

**Oregon Revised Statutes**

***ORS 271.080 (1) Petition for Street Vacation in Incorporated Cities***

9. **Review Criterion:** “Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.”

**Finding:** This criterion is satisfied.

**Details of Finding:** Polygon Homes has filed the described petition. Previous land use actions by the City approve Polygon, contingent on the vacation, to construct private parks on the vacated right-of-way. The reason for the vacation is clear in previous land use approvals and the record of this request, including the connectivity provided by SW 110<sup>th</sup> being provided by planned new roads.

***ORS 271.080 (2) Consent of Adjoining Property Owners***

10. **Review Criterion:** “There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds



in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing."

**Finding:** This criterion is satisfied.

**Details of Finding:** The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

#### ***ORS 271.090 Submission of Street Vacation Petition to City***

11. **Review Criteria:** "The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The petition has been submitted to the City, and Polygon has been informed of the hearing dates before the Development Review Board and City Council.

#### ***ORS 271.100 City Action of Street Vacation Petition***

12. **Review Criteria:** "The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The vacation of these portions of SW 110<sup>th</sup> have long been showed in City adopted master plans and a development application was approved by the City to develop the vacated right-of-way contingent on approval of the vacation. The City is setting and holding public hearings to consider the petition.

#### ***ORS 271.110 Notice of Hearing***

13. **Review Criteria:** This section prescribes the notices required for street vacation hearings including newspaper publication and posting of notices along the right-of-way to be vacated.

**Finding:** These criteria are satisfied.

**Details of Finding:** The noticing requirements required by ORS 271.110 have or will be met prior to the hearing.



***ORS 271.120 Hearing; determination***

14. **Review Criteria:** "At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest."

**Finding:** These criteria are satisfied.

**Details of Finding:** The consent of the owners of the requisite area have been obtained as shown with the attached petitions, notice has been given as prescribed. Public policy, as shown in the Villebois Village Master Plan and Transportation Systems Plan, has long been to vacate the proposed area upon replacement with streets planned as part of the Villebois development. After receiving a recommendation from the Development Review Board the City Council would vacate the street by ordinance.

***ORS 271.140 Title to Vacated Areas***

15. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

***ORS 271.150 Vacation Records to be Filed***

16. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the ordinance will be recorded as required by this section, the cost of which will be borne by the petitioner.



**RECEIVED**  
JAN 06 2014

## **NARRATIVE & COMPLIANCE REPORT**

**SW 110<sup>TH</sup> AVENUE ROW VACATION**


**BY:.....**

### **TABLE OF CONTENTS**

<b>I. PROPOSAL SUMMARY</b>	<b>2</b>
GENERAL INFORMATION	2
REQUEST & PROJECT DESCRIPTION	2
<b>II. WILSONVILLE PLANNING &amp; LAND DEVELOPMENT ORDINANCE</b>	<b>3</b>
4.031 AUTHORITY OF THE DEVELOPMENT REVIEW BOARD	3
4.033 AUTHORITY OF THE CITY COUNCIL	3
4.034 APPLICATION REQUIREMENTS	3
<b>III. CONDITIONS OF APPROVAL</b>	<b>4</b>
DB12-0042 SAP-EAST PDP 3E, PRELIMINARY DEVELOPMENT PLAN	4
<b>IV. OREGON ADMINISTRATIVE RULE (ORS) 271</b>	<b>4</b>
271.080 VACATION IN INCORPORATED CITIES; PETITION; CONSENT OF PROPERTY OWNERS	4
271.120 HEARING; DETERMINATION	5
271.140 TITLE TO VACATED AREAS	5
271.150 VACATION RECORDS TO BE FILED; COSTS	6
271.190 CONSENT OF OWNERS OF ADJOINING PROPERTY; OTHER REQUIRED APPROVAL	6
271.200 PETITION; NOTICE	6
<b>V. CONCLUSION</b>	<b>7</b>

### **LIST OF EXHIBITS**

- A COPY OF APPLICATION FORM**
- B SIGNED PETITION, PETITION EXHIBITS & PROPERTY OWNERSHIP INFO**
- C LEGAL DESCRIPTION AND SKETCH**
- D COPY OF PDP 3E & PDP 4E PHASING PLAN**

 **City of Wilsonville**  
**Exhibit B1 DB14-0001**

## **I. PROPOSAL SUMMARY**

### **GENERAL INFORMATION**

Applicant/Property Owner:

**Polygon Northwest Company**

Applicant's Representative:

**Pacific Community Design, Inc.**  
12564 SW Main Street  
Tigard, OR 97223  
(503) 941-9484  
Contacts: Stacy Connery, AICP  
Patrick Espinosa, PE  
Travis Jansen, PLS

Subject Site:

Portions of SW 110<sup>th</sup> Avenue ROW in  
Villebois SAP East, PDP 3E and PDP  
4E (Tonquin Meadows & Tonquin  
Meadows No. 2)

Abutting Tax Lots:

2916, 2919, 180 & 301 on Map  
3S1W15

### **REQUEST & PROJECT DESCRIPTION**

The Applicant requests approval of a Street Vacation for portions of SW 110<sup>th</sup> Avenue ROW within Villebois PDP 3E and PDP 4E (also known as Tonquin Meadows & Tonquin Meadows No. 2). Exhibit C is a legal description and sketch that depicts the area of the proposed ROW vacation.

The City approved SAP East PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile No. DB12-0053) on November 19, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II areas of PDP 3E and PDP 4E to occur concurrently (see Phasing Plan in Exhibit D). Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. Street improvements to be provided with PDP 3E and PDP 4E include the construction of Costa Circle East and SW Villebois Drive North, replacing the connections provided through the portions of SW 110<sup>th</sup> Avenue within the subject area. The existing transition between Costa Circle and 110<sup>th</sup> Avenue will be demolished with this roadway construction. Portions of 110<sup>th</sup> Avenue within the subject site will be closed with completion of roadway construction. The locations of LG-15, NP-5 (Fir Park), and PP-12 shown on the PDP 3E & PDP 4E Phasing Plan (see Exhibit D) include the areas of proposed ROW vacation. The portions of 110<sup>th</sup> Avenue ROW retained within the site will be incorporated into Stockholm Drive, Berlin Avenue, Villebois Drive N, and SW Costa Circle East, respectively. Vacation of 110<sup>th</sup> Avenue ROW within the subject site is needed to affect the planned change in circulation and to establish the planned parks.



At this time, land development has not been proposed or approved for Tax Lots 700 and 800 on Map 3S1W15. Accordingly, the northern limit of the ROW vacation area is the southern property line of Tax Lot 800. Sufficient area south of the driveway of Tax Lot 800 remains for turnaround purposes.

Compliance with applicable sections of the City of Wilsonville Planning & Land Development Ordinance are addressed in Section II of this Narrative. Section III addresses compliance with the relevant conditions of approval of Casefile No. DB12-0042. Section III addresses compliance with ORS 271.

## **II. WILSONVILLE PLANNING & LAND DEVELOPMENT ORDINANCE**

### **4.031 AUTHORITY OF THE DEVELOPMENT REVIEW BOARD**

**(.01)** As specified in Chapter 2 of the Wilsonville Code and except as specified herein, the Board shall have authority to act on the following types of applications:

- L.** Street vacations, where a specific development application has been filed for the subject property. If no specific development has been filed for the subject property, the vacation request shall be considered by the Planning Commission. Action of the Planning Commission or Board on a street vacation request shall be a recommendation to the City Council.

**Response:** The area of SW 110<sup>th</sup> Avenue to be vacated is within SAP East PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile No. DB12-0053), which were approved on November 12, 2012. The proposed ROW vacation is subject to review by the DRB, which will make a recommendation to City Council.

### **4.033 AUTHORITY OF THE CITY COUNCIL**

**(.01)** Upon appeal, the City Council shall have final authority to act on all applications filed pursuant to Chapter 4 of the Wilsonville Code, with the exception of applications for expedited land divisions, as specified in Section 4.232. Additionally, the Council shall have final authority to interpret and enforce the procedures and standards set forth in this Chapter and shall have final decision-making authority on the following:

- H.** Final actions on street vacation applications.

**Response:** As described above, the proposed street vacation is subject to initial review by the DRB. The Applicant acknowledges that the City Council has final decision-making authority on the proposed ROW vacation.

### **4.034 APPLICATION REQUIREMENTS**

Applications shall be reviewed as follows:

**(.07)** Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.

**Response:** Compliance with the applicable sections of ORS 271 is addressed in Section IV of this Narrative.



### **III. CONDITIONS OF APPROVAL**

#### **DB12-0042 SAP-EAST PDP 3E, PRELIMINARY DEVELOPMENT PLAN**

**PFA 34.** The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110<sup>th</sup> Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110<sup>th</sup> Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2.

**Response:** PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110<sup>th</sup> Avenue will be demolished with roadway construction. Portions of 110<sup>th</sup> Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110<sup>th</sup> Avenue. The Final Plat for the 1<sup>st</sup> phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110<sup>th</sup> Avenue will allow the Applicant to comply with Condition PFA 34.

### **IV. OREGON ADMINISTRATIVE RULE (ORS) 271**

#### **271.080 VACATION IN INCORPORATED CITIES; PETITION; CONSENT OF PROPERTY OWNERS**

- (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.
- (2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street,



but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing.

**Response:** This application is a petition for vacation of portions of SW 110<sup>th</sup> Avenue ROW, as depicted on the attached legal description and sketch (see Exhibit C). This Narrative describes the purpose of the proposed street vacation. Exhibit B includes a copy of the signed petition with an attached map and list that demonstrates the areas of proposed ROW vacation, and the abutting properties and real property affected thereby. The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

#### **271.120 HEARING; DETERMINATION**

At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.

**Response:** The Applicant understands that the governing body shall hear the petition and objections, and determine whether the requirements for street vacation have been met. Compliance with ORS 271.080 is addressed above. The signed petition is provided as Exhibit B. A legal description and sketch are provided as Exhibit C.

#### **271.140 TITLE TO VACATED AREAS**

The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the



abutting property on such side. If a public square is vacated the title thereto shall vest in the city.

**Response:** The Applicant understands that the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

#### **271.150 VACATION RECORDS TO BE FILED; COSTS**

A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

**Response:** ORS 271.150 addresses the final ordinance procedure and accompanying fee for filing and recording. The Applicant acknowledges that the petitioner bears the recording cost and the cost of preparing and filing the certified copy of the ordinance and map, and will carry out this responsibility at the time when the final ordinance is prepared.

#### **271.190 CONSENT OF OWNERS OF ADJOINING PROPERTY; OTHER REQUIRED APPROVAL**

No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

**Response:** Compliance with ORS 271.080 is addressed above. The area of proposed ROW vacation is not within 5,000 feet of a harbor or pierhead line of a port.

#### **271.200 PETITION; NOTICE**

- (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.
- (2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.



**Response:** This application is a petition to the City to vacate portions of ROW, as depicted on the attached legal description and sketch (see Exhibit C). This Narrative describes the circumstance of the proposed street vacation. A copy of the petition signed by abutting property owners, who are also more than 2/3 of owners of real property affected thereby, and a list of the names of the affected property owners is provided as Exhibit B.

## **V. CONCLUSION**

This narrative and the attached exhibits demonstrate compliance with the applicable provisions of the City of Wilsonville Planning & Land Development Ordinance, relevant conditions of approval, and ORS 271. Therefore, the Applicant respectfully requests approval of the proposed street vacation.

# **EXHIBIT A**

## **Copy of Application**



**CITY OF WILSONVILLE**

29799 SW Town Center Loop East

Wilsonville, OR 97070

Phone: 503.682.4960

Fax: 503.682.7025

Web: [www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)

Pre-Application meeting date:

**TO BE COMPLETED BY APPLICANT:**

Please PRINT legibly

**Planning Division****Development Permit Application**

Final action on development application or zone change is required within 120 days in accordance with provisions of ORS 227.175

A pre application conference is normally required prior to submittal of an application. Please visit the City's website for submittal requirements

Incomplete applications will not be scheduled for public hearing until all of the required materials are submitted.

**Applicant:**

Polygon Northwest Company (Fred Gast)

Address: 109 E. 13TH ST., Vancouver, WA 98660

Phone: 360-695-7700

Fax: 360-693-4442

E-mail: [fred.gast@polygonhomes.com](mailto:fred.gast@polygonhomes.com)**Authorized Representative:**

Pacific Community Design (Stacy Connery)

Address: 12564 SW Main Street, Tigard, Oregon 97223

Phone: 503-941-9484

Fax: 503-941-9485

E-mail: [stacy@pacific-community.com](mailto:stacy@pacific-community.com)**Property Owner:**

same as applicant

Address:

Phone:

Fax:

E-mail:

**Property Owner's Signature:**

Printed Name: Fred Gast

Date: 11/15/2013

**Applicant's Signature (if different from Property Owner):**

Printed Name:

Date:

**Site Location and Description:**

Project Address if Available: Suite/Unit

Project Location: SW 110th Avenue w/in Villebois PDP 3E &amp; PDP 4E

Tax Map #(s): 3 1W 15 Tax Lot #(s): County: ☐ Washington ☒ Clackamas

Request: Vacation of ROW along remaining portions of SW 110th Avenue w/in Villebois PDP 3E &amp; PDP 4E

Project Type: Class I ☐ Class II ☐ **Class III** ☒☒ Residential☐ Commercial☐ Industrial☐ Other (describe below)**Application Type:**☐ Annexation☐ Final Plat☐ Plan Amendment☐ Request for Special Meeting☐ SROZ/SRIR Review☐ Type C Tree Removal Plan☐ Villebois SAP☐ Zone Map Amendment☐ Appeal☐ Major Partition☐ Planned Development☐ Request for Time Extension☐ Staff Interpretation☐ Tree Removal Permit (B or C)☐ Villebois PDP☒ Other Street Vacation☐ Comp Plan Map Amend☐ Minor Partition☐ Preliminary Plat☐ Signs☐ Stage I Master Plan☐ Temporary Use☐ Villebois PDP☐ Conditional Use☐ Parks Plan Review☐ Request to Modify Conditions☐ Site Design Review☐ Stage II Final Plan☐ Variance☐ Waiver



**CITY OF WILSONVILLE**

29799 SW Town Center Loop East

Wilsonville, OR 97070

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Pre-Application meeting date:

**TO BE COMPLETED BY APPLICANT:**

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Address: 109 E. 13TH ST., Vancouver, WA 98660

Phone: 360-695-7700

Fax: 360-693-4442

E-mail: [fred.gast@polygonhomes.com](mailto:fred.gast@polygonhomes.com)**Authorized Representative:**

Pacific Community Design (Stacy Connery)

Address: 12564 SW Main Street, Tigard, Oregon 97224

Phone: 503-941-9484

Fax: 503-941-9485

E-mail: [stacy@pacific-community.com](mailto:stacy@pacific-community.com)**Property Owner:**

same as applicant

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**Property Owner's Signature:**Printed Name: Fred GastDate: 11/15/2013**Applicant's Signature (if different from Property Owner):**

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Site Location and Description:**

Project Address if Available: \_\_\_\_\_ Suite/Unit \_\_\_\_\_

Project Location: SW 110th Avenue w/in Villebois PDP 3E & PDP 4ETax Map #(s): 3 1W 15 Tax Lot #(s): \_\_\_\_\_ County: ☐ Washington ☒ ClackamasRequest: Vacation of ROW along remaining portions of SW 110th Avenue w/in Villebois PDP 3E & PDP 4EProject Type: Class I ☐ Class II ☐ **Class III** ☒☒ Residential☐ Commercial☐ Industrial☐ Other (describe below)**Application Type:**☐ Annexation☐ Final Plat☐ Plan Amendment☐ Request for Special Meeting☐ SROZ/SRIR Review☐ Type C Tree Removal Plan☐ Villebois SAP☐ Zone Map Amendment☐ Appeal☐ Major Partition☐ Planned Development☐ Request for Time Extension☐ Staff Interpretation☐ Tree Removal Permit (B or C)☐ Villebois PDP☒ Other Street Vacation☐ Comp Plan Map Amend☐ Minor Partition☐ Preliminary Plat☐ Signs☐ Stage I Master Plan☐ Temporary Use☐ Villebois PDP☐ Conditional Use☐ Parks Plan Review☐ Request to Modify Conditions☐ Site Design Review☐ Stage II Final Plan☐ Variance☐ Waiver



## **EXHIBIT B**

### **Signed Petition, Petition Exhibits & Property Ownership Info**

## Street Vacation Petition

---

This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **Exhibit A**. All signatures must be in ink. A listing of the names and addresses of all abutting and affected area property owners, as shown on the attached Street Vacation Map, was obtained from the Clackamas County real property tax roll records and is attached hereto as **Exhibit B**.

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- 1) Polygon at Villebois III, LLC

\_\_\_\_\_  
Property Owner's Name

No site address; Reference Parcel 31W15 02916

\_\_\_\_\_  
Property Street Address and Legal Description

No site address; Reference Parcel 31W15 02919

\_\_\_\_\_  
Property Street Address and Legal Description

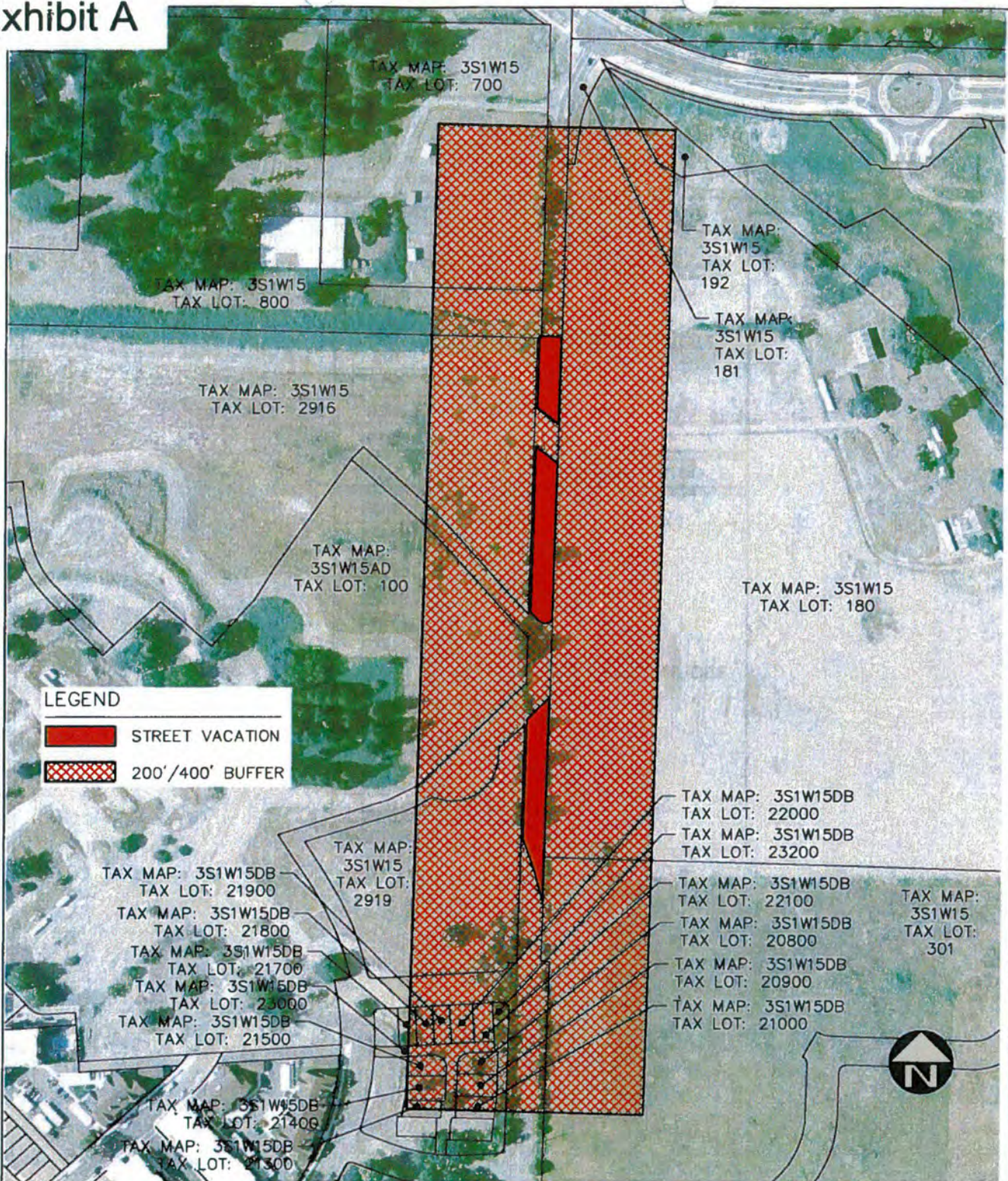
  
\_\_\_\_\_  
Signature

01/09/14  
\_\_\_\_\_  
Date



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legals\395025 Street Vacation Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cll



DRAWN BY: CLL DATE: 12/12/13  
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 PAGE 1 OF 2



12564 SW Main St  
 Tigard, OR 97223  
 [T] 503-941-9484  
 [F] 503-941-9485



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PAGE 2 OF 2



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# Exhibit B

REFPARCEL	OWNER	OWNERFIRST	OWNERLAST	MAILADDRES	MAILCITY	MAILSTATE	MAILZIP
31W15 00700	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00800	Roger Chang	Roger	Chang	3205 Edgemont Rd	Lake Oswego	OR	97035
31W15 00180	Donald Bischoff	Donald	Bischoff	16300 SW 192nd Ave	Sherwood	OR	97140
31W15 00301	Polygon At Villebois LLC	Polygon At Villebois LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 00181	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15 00192	Wilsonville Urban Renewal Agency	Wilsonville Urban Renewal Agency		29799 SW Town Center Loop E	Wilsonville	OR	97070
31W15AD00100	Rcs-Villebois Dev LLC	Rcs-Villebois Dev LLC		371 Centennial Pkwy #200	Louisville	CO	80027
31W15 02916	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
31W15 02919	Pnw Home Builders LLC	Pnw Home Builders LLC		109 E 13th St #200	Vancouver	WA	98660
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31W15DB20900	Jeffrey Barram	Jeffrey	Barram	28955 SW Costa Cir E	Wilsonville	OR	97070
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## Street Vacation Petition

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- 2) Polygon at Villebois V, LLC  
Property Owner's Name

29092 SW 110th Ave, Wilsonville, Oregon 97070; Reference Parcel 31W15 00301  
Property Street Address and Legal Description

Signature



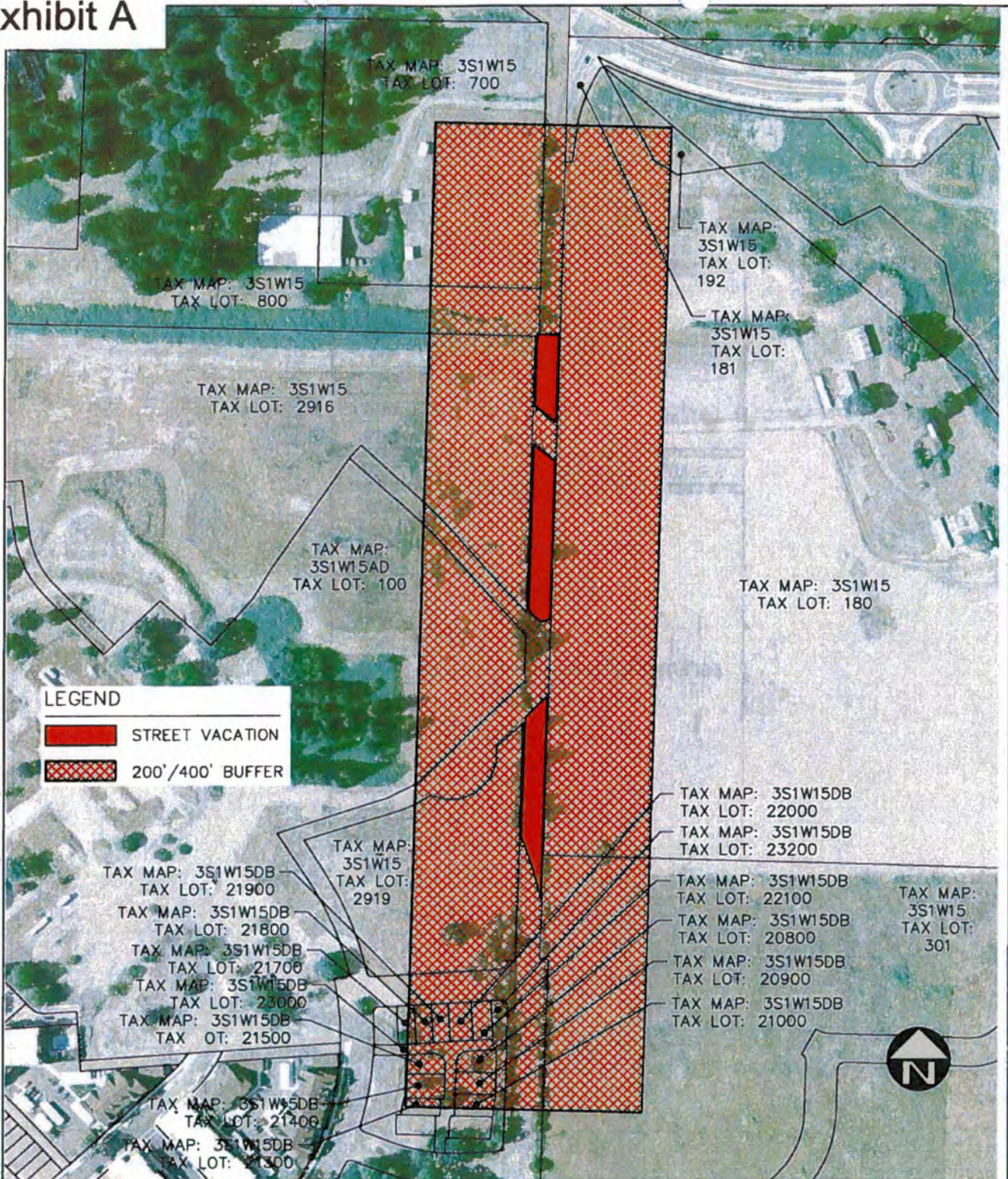
Date

01/09/14



# Exhibit A

N:\proj\395-025\09 Drawings\06 Survey\Legal\395025 Street Vacation Lots.2013-12-12.dwg - SHEET: Legal Desc Dec. 18, 13 - 10:52 AM cl



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12564 SW Main St  
 Tigard, OR 97223  
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## Street Vacation Petition

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3) Donald Bischoff  
Property Owner's Name

No Site Address; Reference Parcel 31W15 00180  
Property Street Address and Legal Description

Donald Bischoff

Signature

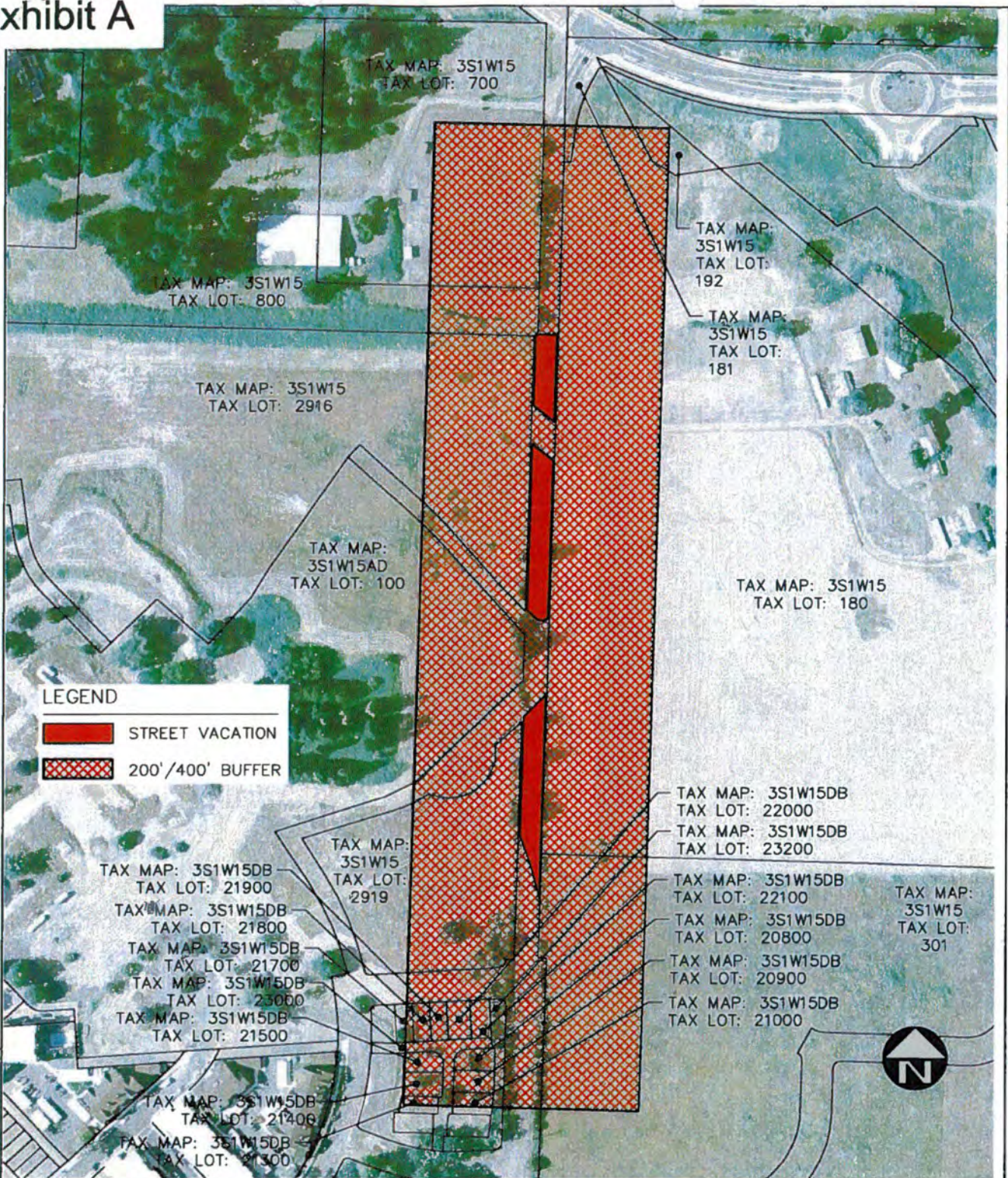
12-19-13

Date



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# **EXHIBIT C**

## **Legal Description & Sketch**





## EXHIBIT A

December 24, 2013

### LEGAL DESCRIPTION Right-of-Way Vacation

Job No. 395-025

Three tracts of land being portions of SW 110<sup>th</sup> Avenue (County Road No. 355) Right-of-Way located in the Northeast Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, State of Oregon, more particularly described as follows:

#### Tract 1

BEGINNING at the Northeast corner of Tract "OO", plat of "Tonquin Woods at Villebois No. 4";

thence South 88°24'59" East, a distance of 40.00 feet to a point on the easterly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 166.59 feet;

thence leaving said easterly Right-of-Way line, North 50°46'32" West, a distance of 2.28 feet;

thence along a 770.50 foot radius tangential curve to the right, arc length of 24.11 feet, central angle of 01°47'33", chord distance of 24.10 feet, and chord bearing of North 49°52'45" West;

thence North 48°58'59" West, a distance of 25.04 feet to a point on the westerly Right-of-Way line of said SW 110<sup>th</sup> Avenue;

thence along said westerly Right-of-Way line, North 01°35'01" East, a distance of 134.28 feet to the POINT OF BEGINNING.

Containing 6,024 square feet, more or less.

#### Tract 2

BEGINNING at the most southerly corner of Tract "NN", plat of "Tonquin Woods at Villebois No. 4";

thence along the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue, North 01°35'01" East, a distance of 317.69 feet;

thence leaving said westerly Right-of-Way line, along a 829.50 foot radius non-tangential curve, concave northeasterly, with a radius point bearing North 39°24'48" East, arc length of

2.73 feet, central angle of 00°11'19", chord distance of 2.73 feet, and chord bearing of South 50°40'52" East;

thence South 50°46'32" East, a distance of 47.79 feet to a point on the easterly Right-of-Way line of said SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 301.53 feet;

thence leaving said easterly Right-of-Way line, along a 15.00 foot radius non-tangential curve, concave northerly, with a radius point bearing North 50°40'50" West, arc length of 24.85 feet, central angle of 94°54'18", chord distance of 22.10 feet, and chord bearing of South 86°46'19" West;

thence North 45°46'32" West, a distance of 24.44 feet to the POINT OF BEGINNING.

Containing 12,657 square feet, more or less.

### Tract 3

COMMENCING at the most northerly corner of Parcel 2, Partition Plat No. 2010-046;

thence along the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue, South 01°35'01" West, a distance of 68.95 feet to the POINT OF BEGINNING;

thence leaving said westerly Right-of-Way line, North 46°43'10" East, a distance of 19.16 feet;

thence along a 646.00 foot radius tangential curve to the left, arc length of 38.44 feet, central angle of 03°24'32", chord distance of 38.43 feet, and chord bearing of North 45°00'54" East to a point on the easterly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said easterly Right-of-Way line, South 01°35'01" West, a distance of 388.84 feet;

thence leaving said easterly Right-of-Way line, along a 788.00 foot radius non-tangential curve, concave westerly, with a radius point bearing South 77°24'40" West, arc length of 124.82 feet, central angle of 09°04'33", chord distance of 124.69 feet, and chord bearing of North 17°07'37" West to a point on the westerly Right-of-Way line of SW 110<sup>th</sup> Avenue;

thence along said westerly Right-of-Way line, North 01°35'01" East, a distance of 229.31 feet to the POINT OF BEGINNING.

Containing 12,139 square feet, more or less.

Basis of bearings being plat of "Tonquin Woods at Villebois No. 4", Clackamas County Survey Records.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
JULY 9, 2002  
TRAVIS C. JANSEN  
57751

RENEWS: 6/30/2015

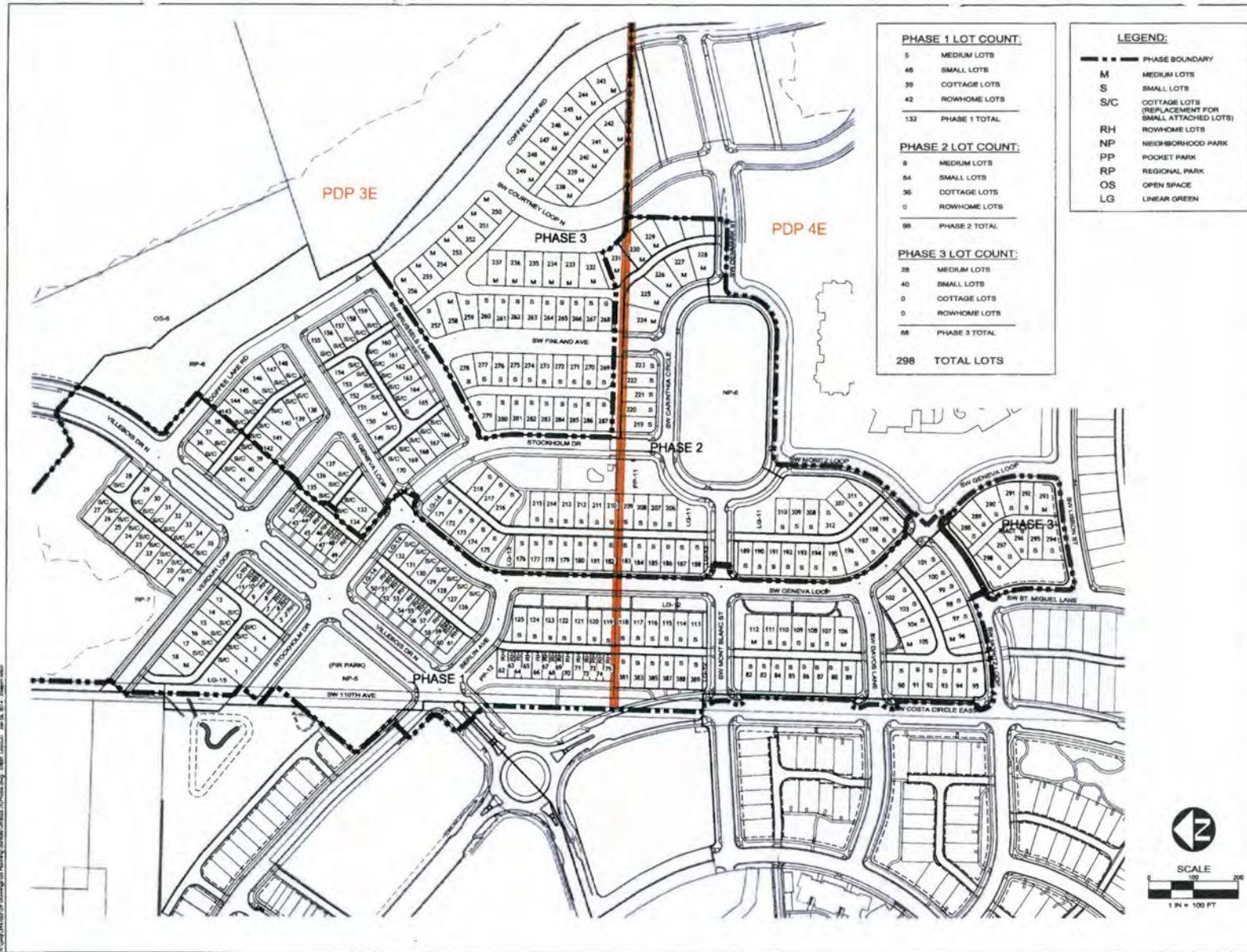




# **EXHIBIT D**

## **Copy of PDP 3E and PDP 4E Phasing Plan**





POLYGON NW COMPANY  
(T) (505) 695-7700 (F) (505) 693-4443  
WWW.POLYGONNW.COM

DATE: 9/12/2013

REVISIONS  
NO. DATE DESCRIPTION

# Tonquin Meadows & Tonquin Meadows No. 2

Phasing  
Plan



(T) 503-941-9484 (F) 503-941-9485

PROJECT NO.: 395-025  
TYPE: PLANNING  
REVIEWED BY: JJK

A



**EXHIBIT C1  
PLANNING DIVISION  
STAFF REPORT**

**SW 110<sup>th</sup> AVENUE STREET VACATION  
VILLEBOIS SAP EAST PDP 3 AND 4**

**DEVELOPMENT REVIEW BOARD PANEL ' \_\_\_ ' ,  
QUASI JUDICIAL HEARING**

---

**Public Hearing Date:**

**Date of Report:**

**Application Numbers:**

**Request A: DB14-0001 Vacation OF A Portion of SW  
110<sup>th</sup> Avenue Right-of-Way**

**Property**

**Owners/Applicants:**

PD = Planning Division conditions  
BD – Building Division Conditions  
PF = Engineering Conditions.  
NR = Natural Resources Conditions  
TR = SMART/Transit Conditions  
FD = Tualatin Valley Fire and Rescue Conditions

**CONDITIONS OF APPROVAL**

- PFA 1.** Concurrently with the 110<sup>th</sup> Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110<sup>th</sup> Avenue prior to its demolition and reconfiguration of the street network.
- PFA 2.** For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum 15-foot wide easements centered on the utility. For private easements they shall be of sufficient width as needed by the private utility and as approved by the City.
- PFA 3.** The future demolition of 110<sup>th</sup> Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.



Public Works Plan Review Comments

Plans for Review:  
Issue Date:

110<sup>th</sup> Ave ROW Vacation  
January 16/17, 2014

Return All Comments To:  
Due Date:

Dan Pauly  
January 30, 2014

Name	Page No.	Comments	Engineering's Response
Randy Watson			
Matt Baker		No Comments	
Steve Munsterman		No Comments	
Arnie Gray		No Comments	
Ralph Thorp		Still need to provide water to City irrigation meter at 110 <sup>th</sup> and Tooze. Maybe install new meter at the roundabout?	
Jason Labrie / Steve Gering		No Comments	
Mark Folz / Paul Havens		No Comments	



King, Sandy

---

**From:** White, Shelley  
**Sent:** Tuesday, January 21, 2014 10:35 AM  
**To:** Straessle, Linda  
**Cc:** Pauly, Daniel; King, Sandy  
**Subject:** Public Hearing Notice DRB- Feb. 10th and CC- March 3rd  
**Attachments:** PHN.docx

Hi Linda,

Would you please post this Public Hearing Notice to the Web and send to the paper for publication?

110<sup>th</sup> Avenue Street Vacation - scheduled for: DRB February 10<sup>th</sup>, 2014  
City Council March 3<sup>rd</sup>, 2014

Please note that this PHN needs to be published in the paper for two consecutive weeks prior to the hearing as Dan mentioned in the e-mail string below.

Thanks,

*Shelley White*

Administrative Assistant  
City of Wilsonville  
Ph: 503 570-1575  
[swhite@ci.wilsonville.or.us](mailto:swhite@ci.wilsonville.or.us)

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**From:** Straessle, Linda  
**Sent:** Friday, January 17, 2014 10:46 AM  
**To:** Pauly, Daniel; White, Shelley  
**Subject:** RE: Publishing Public Notice for Street Vacation

We can turn it in once with the request that it run for two weeks.

*Linda Straessle* | Planning Administrative Assistant | City of Wilsonville  
29799 SW Town Center Loop East | Wilsonville OR 97070  
503.570.1571 | [straessle@ci.wilsonville.or.us](mailto:straessle@ci.wilsonville.or.us)

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**From:** Pauly, Daniel  
**Sent:** Friday, January 17, 2014 8:21 AM  
**To:** White, Shelley; Straessle, Linda  
**Subject:** Publishing Public Notice for Street Vacation



With the street vacation coming up next week the noticing requirements are different than typical. The Public Notice needs to be ran in the local paper for 2 consecutive weeks prior to the hearing. My understanding is we need to do the following

My understanding of the dates to get notice to Newspaper for publication by noon is:

Turn it in Thursday January 23rd for the January 28<sup>th</sup> edition

Turn it in Thursday January 30<sup>th</sup> for the February 4<sup>th</sup> edition

Do we need to turn it in once for both weeks, or do we need to turn it in twice?

Thanks for your help on this unique process



**Daniel Pauly, AICP | Associate Planner**

☎: Extension 1536 | ✉: [pauly@ci.wilsonville.or.us](mailto:pauly@ci.wilsonville.or.us)

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King, Sandy

2/18/14 max staff report ok

**From:** Pauly, Daniel  
**Sent:** Tuesday, February 18, 2014 2:31 PM  
**To:** Kohlhoff, Mike; White, Shelley; King, Sandy  
**Cc:** Ossanna, Joanne; Neamtzu, Chris; Kraushaar, Nancy  
**Subject:** RE: 110th Ave. Street Vacation Staff Report for Council  
**Attachments:** 2. Attachment A City Council Findings.docx

Comments all reviewed of statutes.

Mike. A compliance staff report is Attachment A to the Ordinance. I have attached it here for your reference. It is included in the materials Shelley sent up to Sandy.



Daniel Pauly, AICP | Associate Planner | City of Wilsonville | Planning Division

29799 SW Town Center Loop East | Wilsonville OR 97070 | ☎: 503.682.4960 | ✉: [pauly@ci.wilsonville.or.us](mailto:pauly@ci.wilsonville.or.us)

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**From:** Kohlhoff, Mike  
**Sent:** Tuesday, February 18, 2014 2:26 PM  
**To:** White, Shelley; King, Sandy  
**Cc:** Ossanna, Joanne; Pauly, Daniel; Neamtzu, Chris; Kraushaar, Nancy  
**Subject:** RE: 110th Ave. Street Vacation Staff Report for Council

Dan,

Since the staff report didn't address all the statutory requirements and there was no petition or ordinance forwarded, have you made sure that ORS 271.080 has been followed: (1) the petition sets forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation and (2) appended to the petition as a part thereof and as a basis for granting same, the consent of all the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. The petition is presented to the recording officer of the City and if the officer finds the petition sufficient, it is filed and then at least one of the petitioners is informed when it will come before the City Council. Failure to give such notice shall not cause a lack of jurisdiction to proceed. ORS 211.090. After notice is given the Council can deny the petition, but if there appears no reason why the Council should deny the petition in whole or in part, the Council shall fix a formal time for the petition to be heard. ORS 271.100.

ORS 271.110 provides for the Notice of Hearing to be published in the city official newspaper for two consecutive weeks prior to the hearing. The statute also provides what must go into the notice. It also provides that within five days after the first day of the publication, there shall be posted at or near the end of each end of the proposed vacation a copy of the notice with the heading Notice of Street Vacation. The places posted must be conspicuous and be posted at least 14 days before the hearing. The city recorder shall before publishing notice obtain from the petitioners a sum sufficient to cover the cost of notice, posting and other anticipated expenses. Any surplus over actual costs is to be returned to petitioner.



The Council shall hear the petition and objections and shall determine whether the consent of the owners of the requisite land has been obtained, whether notice has been duly given, and whether the public interest will be prejudiced by such vacation. ORS 271.130. this should be set out in the approving ordinance.

ORS 271.140 provides for the title of the vacated land is to attach to the lands bordering on such area in equal proportions, except where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of (the statute goes on to describe what happens in such a situation). The ordinance allowing the vacation should address this as well.

ORS 271.160 provides a **certified copy of the ordinance vacating a street and any map or other record in regard thereto shall be filed with the Count Clerk, the County Assessor, and County Surveyor at petitioners costs.**

Mike

Michael E. Kohlhoff  
City Attorney  
City of Wilsonville  
29799 SW Town Center Loop E  
Wilsonville OR 97070  
503-570-1508  
503-682-1015 fax  
[kohlhoff@ci.wilsonville.or.us](mailto:kohlhoff@ci.wilsonville.or.us)

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Circular 230 Disclaimer: If any portion of this communication is interpreted as providing federal tax advice, Treasury Regulations require that we inform you that we neither intended nor wrote this communication for you to use in avoiding federal tax penalties that the IRS may attempt to impose and that you may not use it for such purpose.

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**From:** White, Shelley  
**Sent:** Tuesday, February 18, 2014 8:51 AM  
**To:** King, Sandy  
**Cc:** Ossanna, Joanne; Kohlhoff, Mike; Pauly, Daniel  
**Subject:** 110th Ave. Street Vacation Staff Report for Council

Hi Sandy,

Here is Dan's staff report for City Council for the 110<sup>th</sup> Avenue Street Vacation (DB14-0001) that will be heard at the March 3 City Council meeting. I will be bringing the rest of the record items up to you shortly.

*Shelley White*  
Administrative Assistant  
City of Wilsonville  
Ph: 503 570-1575  
[swhite@ci.wilsonville.or.us](mailto:swhite@ci.wilsonville.or.us)

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Ordinance No. 736 Attachment A  
**STAFF REPORT**  
**WILSONVILLE PLANNING DIVISION**

*SW 110th Avenue Street Vacation, PDP 3 and 4 East*  
*"Tonquin Meadows"*

**CITY COUNCIL**  
**QUASI-JUDICIAL PUBLIC HEARING FOR STREET VACATION**

---

**HEARING DATE:** March 3, 2014

**APPLICATION NO.:** DB14-0001 Vacation of a Portion of SW 110th Avenue Right-of-Way

**REQUEST/SUMMARY:** The City Council is being asked to review the vacation of portions of SW 110<sup>th</sup> Avenue to allow development of private park areas consistent with the previously approved Villebois Phases 3 and 4 East. The connectivity provided by SW 110<sup>th</sup> will be provided by a planned new segment of SW Villebois Drive North.

**LOCATION:** Portions of SW 110<sup>th</sup> Avenue right-of-way between SW Mont Blanc Street and SW Tooze Road/SW Boeckman Road, Section 15, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

**ADJACENT  
PROPERTY OWNERS:** Donald E. Bischoff and Sharon L. Lund (Tax Lot 180)  
Polygon at Villebois III LLC (Tax Lots 2916 and 2919)  
Polygon at Villebois V LLC (Tax Lot 301)

**APPLICANT/  
PETITIONER:** Fred Gast, Polygon NW Company

**APPLICANT'S REP.:** Stacy Connery, AICP, Pacific Community Design, Inc.

**COMPREHENSIVE PLAN MAP DESIGNATION:** Residential-Village

**ZONE MAP CLASSIFICATIONS:** V (Village)

**STAFF REVIEWERS:** Daniel Pauly AICP, Associate Planner  
Steve Adams PE, Development Engineering Manager

**DRB RECOMMENDATION:** **Approve** the request and vacate the requested portions of SW 110<sup>th</sup> Avenue as shown on the map below.





## APPLICABLE REVIEW CRITERIA

<b>DEVELOPMENT CODE</b>	
<b>Section 4.008</b>	<b>Application Procedures-In General</b>
<b>Section 4.009</b>	<b>Who May Initiate Application</b>
<b>Section 4.010</b>	<b>How to Apply</b>
<b>Section 4.011</b>	<b>How Applications are Processed</b>
<b>Section 4.014</b>	<b>Burden of Proof</b>
<b>Subsection 4.031 (.01) L.</b>	<b>Authority of the Development Review Board: Street Vacations</b>
<b>Subsection 4.032 (.01) D.</b>	<b>Authority of the Planning Commission: Street Vacations</b>
<b>Subsection 4.033 (.01) H.</b>	<b>Authority of the City Council: Street Vacations</b>
<b>Subsection 4.034 (.07)</b>	<b>Street Vacation Review Standards and Procedures</b>
<b>OTHER PLANNING DOCUMENTS</b>	
<b>Villebois Village Master Plan</b>	
<b>Transportation Systems Plan</b>	
<b>SAP East Approval Documents</b>	
<b>PDP 3 East Approval Documents</b>	
<b>PDP 4 East Approval Documents</b>	
<b>OREGON REVISED STATUTES</b>	
<b>ORS 271.080</b>	<b>Vacation in incorporated cities; petition; consent of property owners.</b>
<b>ORS 271.120</b>	<b>Vacation hearing; determination.</b>
<b>ORS 271.140</b>	<b>Title to vacated areas.</b>
<b>ORS 271.150</b>	<b>Vacation records to be filed; costs.</b>
<b>ORS 271.190</b>	<b>Vacation consent of owners of adjoining properties; other required approval.</b>
<b>ORS 271.200</b>	<b>Vacation Petition; notice</b>

## BACKGROUND/SUMMARY:

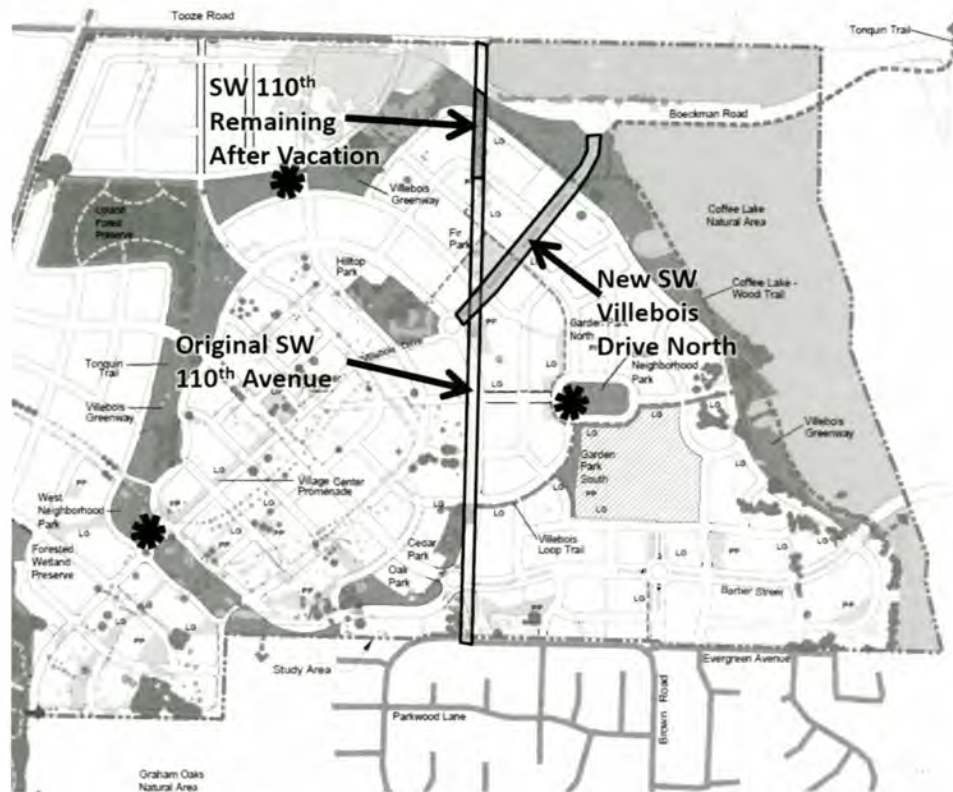
SW 110<sup>th</sup> Avenue has long served as a north south connection on the west side of Wilsonville. Historically it connected SW Brown Rd./SW Camelot directly north to SW Tooze Road. The Villebois Village Master Plan, originally adopted in 2003, shows a new circulation system replacing SW 110<sup>th</sup> and the north-south connectivity it provided. During the earlier phases of Villebois development the most southerly portion of the original SW 110<sup>th</sup> Avenue was vacated and is now a pedestrian connection with plantings extending from SW Camelot Street to the SW Costa Circle/SW Barber Street round-a-bout. The portions of the original SW 110<sup>th</sup> Avenue between the pedestrian connection and the southernmost portion of proposed vacation have been converted to the SW Costa Circle/SW Barber Street round-a-bout and a segment of SW Costa Circle East. The proposed vacation allows the conversion of much of the remainder of SW 110<sup>th</sup> Avenue into private park areas, as shown in the Villebois Village Master Plan. Some segments of the right-of-way will not be vacated, but be incorporated into planned streets including SW Villebois Drive North, SW Berlin Avenue, and SW Stockholm Avenue. The very northern portion of SW 110<sup>th</sup> Avenue will remain to provide access to a property on the west side of SW 110<sup>th</sup> just south of SW Tooze Road not yet proposed for development. The north-south

City Council, Staff Report March 3, 2014  
Vacation of Portions of SW 110<sup>th</sup> Avenue

Ordinance No. 736 Attachment A



connectivity of SW 110<sup>th</sup> Avenue will be replaced by a new segment of SW Villebois Drive North which will connect from a new round-a-bout at SW Costa Circle to the existing round-a-bout on SW Boeckman Rd./SW Tooze Rd. just west of the Boeckman bridge. The demolition of SW 110<sup>th</sup> and construction of the new SW Villebois Drive North segment is currently planned later this year together with Polygon Homes construction of a new subdivision previously approved.



## CONCLUSION AND CONDITIONS OF APPROVAL:

Staff and the DRB have reviewed the applicant's analysis of compliance with the applicable criteria. This Staff report adopts the applicant's responses as Findings of Fact except as noted in the Findings. Based on the Findings of Fact and information included in this Staff Report, and information received from a duly advertised public hearing, the Development Review Board recommends approval of the proposed application (DB14-0001) with the following conditions:

### **Conditions:**

- |  |
|--|
| <p><b>PF 1.</b> Concurrently with the 110th Avenue Right-of-Way vacation, the Applicant shall file Temporary Public Access Easements over the same described parcels being vacated to allow legal continued use of 110th Avenue prior to its demolition and reconfiguration of the street network.</p>   |
| <p><b>PF 2.</b> For any public or private utilities currently located within the proposed vacated Right-of-Way, and anticipated to remain in this location, Applicant shall provide public or private utility easements on City approved forms. For public easements these shall be minimum 15-foot wide easements centered on the utility. For private easements they shall be of</p> |



sufficient width as needed by the private utility and as approved by the City.

**PF 3.** The future demolition of 110th Avenue and construction of the street network in Tonquin Meadows will need to be coordinated with the City to minimize impacts to the traveling public.

## **FINDINGS OF FACT:**

### **1. Prior land use actions include:**

#### Legislative:

02PC06 - Villebois Village Concept Plan  
02PC07A - Villebois Comprehensive Plan Text  
02PC07C - Villebois Comprehensive Plan Map  
02PC07B - Villebois Village Master Plan  
02PC08 - Village Zone Text  
04PC02 - Adopted Villebois Village Master Plan  
LP-2005-02-00006 - Revised Villebois Village Master Plan  
LP-2005-12-00012 - Revised Villebois Village Master Plan (Parks and Recreation)  
LP13-0005 - Revised Villebois Village Master Plan

#### Quasi Judicial:

04 DB 22 et seq - SAP-East  
DB12-0042 et seq - PDP-3E Tonquin Meadows  
DB12-0050 et seq - PDP-4E Tonquin Meadows No. 2  
DB13-0013 et seq - PDP-4C Polygon Northwest at Villebois No. 2  
AR13-0046 PDP 3 and 4 East Phasing Amendment

### **2. The applicant has complied with Sections 4.013-4.031 of the Wilsonville Code, said sections pertaining to review procedures and submittal requirements. The required public notices have been sent and all proper notification procedures have been satisfied.**

## **CONCLUSIONARY FINDINGS:**

### **Planning and Land Development Ordinance**

#### ***Subsections 4.031 (.01) L., 4.032 (.01) D., Subsection 4.033 (.01) H. Authority to Review Street Vacations***

- Review Criteria:** These subsections define the roles of the Development Review Board, the Planning Commission, and City Council for street vacations. The Development Review Board is authorized to make recommendations to City Council for street vacations where a specific development application has been filed for the subject property. The Planning Commission is authorized to make recommendations to City Council for street vacations where no specific development application has been filed for the subject property. City Council takes final action on street vacation applications.

**Finding:** These criteria are satisfied.

**Details of Finding:** Specific development applications have been filed and approved by the City for the land being vacated subject to approval of the street vacation. The land is



approved to be development as private park space. See case files DB12-0042 (Preliminary Development Plan, Villebois Phase 3 East), DB12-0048 (Final Development Plan for Parks and Open Space, Villebois Phase 3 East), DB12-0050 (Preliminary Development Plan, Villebois Phase 4 East), and DB12-0054 (Final Development Plan for Parks and Open Space, Villebois Phase 4 East). Due to the previous submission of specific development application for the subject land, the Development Review Board is reviewing the street vacation to make a recommendation to City Council. The City Council will then take the final action on the request.

#### ***Subsection 4.034 (.07) Standards for Street Vacation***

2. **Review Criteria:** "Applications for street vacations shall be reviewed in accordance with the standards and procedures set forth in ORS 271.  
**Finding:** These criteria are satisfied.  
**Details of Finding:** As shown in Findings 9 -16 below, the request is being reviewed in accordance with ORS 271.

#### ***Previous Land Use Approvals***

##### ***DB12-0042 SAP-East PDP 3E, Preliminary Development Plan, Condition of Approval PFA 34.***

3. **Review Criteria:** "The City understands that the Applicant will also construct Villebois Drive west of the development through its intersection with Costa Circle, and construct Costa Circle from this intersection to its present location at Mt. Blanc. Existing transition between Costa Circle and 110th Avenue shall be demolished with construction of the new roadway.

With completion of this roadway construction, 110th Avenue will be closed. Applicant shall submit the required exhibits and work with the City to abandon or transfer the existing right-of-way and create easements for the underground private and/or public utilities that remain. See also PDA 2."

**Finding:** These criteria are satisfied.

**Details of Finding:** PDP 3E (Casefile No. DB12-0042) and PDP 4E (Casefile DB12-0053) received planning approval on November 12, 2012. PDP 3E and PDP 4E phasing was amended on November 19th, 2013 with Casefile AR13-0046, which allows development of Phase I areas of PDP 3E and PDP 4E and Phase II of PDP 3E and PDP 4E to occur concurrently. Construction of improvements will occur with Phase I of PDP 3E and PDP 4E and will begin upon approval of construction plans and issuance of permits. The existing transition between Costa Circle and 110th Avenue will be demolished with roadway construction. Portions of 110th Avenue within the subject site will be close with completion of roadway construction.

This application provides the required exhibits for vacation of the necessary portions of 110th Avenue. The Final Plat for the 1st phase of Tonquin Meadows will address further transfer of the vacated areas and any easements that are necessary. Separate documents addressing any easements outside of areas to be platted will be provided in conjunction with the Final Plat.

Approval of this application for ROW vacation of portions of SW 110th Avenue will allow the Applicant to comply with Condition PFA 34.

**Transportation Systems Plan**

***Table 5-4. Higher Priority Projects (Southwest Quadrant) Roadway Extensions***

4. **Review Criteria:**

RE-09	Villebois Drive Extension	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Costa Circle to Coffee Lake Drive	\$390,000
RE-10	Villebois Drive Extension (Part 2)	Construct 2-lane roadway with bike lanes, sidewalks, and transit stop improvements from Coffee Lake Drive to Boeckman Road	\$250,000

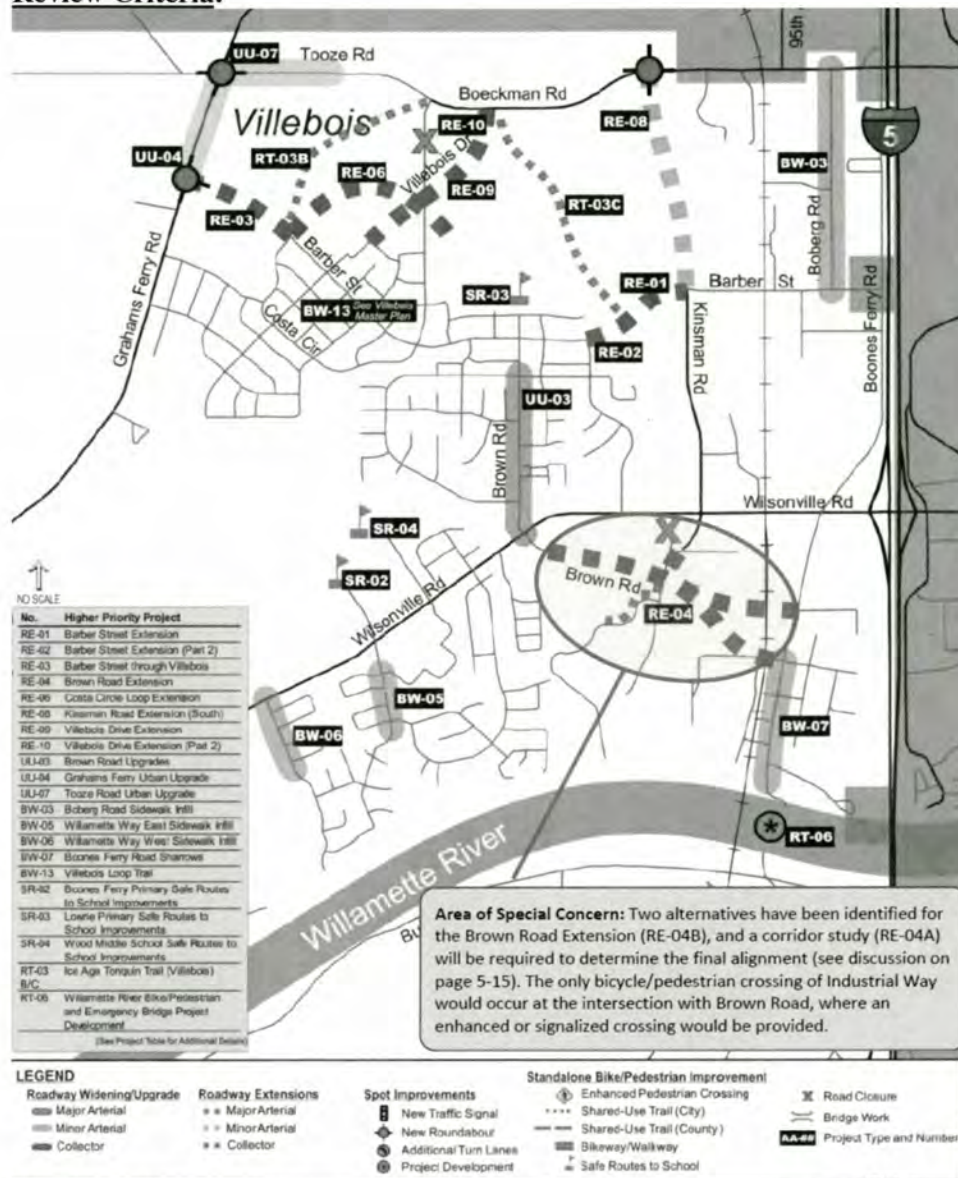
**Finding:** These criteria are satisfied.

**Details of Finding:** The listed extensions of Villebois Drive in the Transportation System Plan are planned to be constructed as part of Construction Phase 1 of PDP 3 and 4 East as shown in the phasing plan approved in Case File AR13-0046, and will replace the north-south connectivity between Villebois and SW Boeckman Road/SW Tooze Road.



Figure 5-5. Higher Priority Projects (Southwest Quadrant)

5. **Review Criteria:**



**Finding:** This criterion is satisfied.

**Details of Finding:** The closure of SW 110<sup>th</sup> is shown by the red "X" in Figure 5-5 in association with projects RE-09 and RE-10, extension of SW Villebois Drive.

## Villebois Village Master Plan

**Figure 5B Parks and Open Space Categories**

6. **Review Criteria:**



**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show the intention for the portions of SW 110<sup>th</sup> being vacated to become private parks.



Figure 7 Street Plan

7. **Review Criteria:**



**Finding:** This criterion is satisfied.

**Details of Finding:** This and other figures show how SW 110<sup>th</sup> is not planned as part of the circulation and street system in the Villebois Village Master Plan.

**Figure 8. Proposed Arterial and Collector System**

8. **Review Criteria:**

Figure 8



**Finding:** This criterion is satisfied.

**Details of Finding:** Figure 8 of the Villebois Village Master Plan shows SW 110<sup>th</sup> Avenue as an “Existing street replaced by the Villebois Circulation Plan.”

**Oregon Revised Statutes**

***ORS 271.080 (1) Petition for Street Vacation in Incorporated Cities***

9. **Review Criterion:** “Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.”

**Finding:** This criterion is satisfied.

**Details of Finding:** Polygon Homes has filed the described petition. Previous land use actions by the City approve Polygon, contingent on the vacation, to construct private parks on the vacated right-of-way. The reason for the vacation is clear in previous land use approvals and the record of this request, including the connectivity provided by SW 110<sup>th</sup> being provided by planned new roads.

***ORS 271.080 (2) Consent of Adjoining Property Owners***

10. **Review Criterion:** “There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds



in area of the real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing."

**Finding:** This criterion is satisfied.

**Details of Finding:** The petition has been signed by all owners of abutting property, who are also the owners of more than two-thirds (2/3) of real property affected thereby. The total size of real property affected thereby is 699,961 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 518,679 SF, or 74% of the total real property affected thereby. Given that the petition has been signed by all owners of abutting property, consent of property owners for 74% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

#### ***ORS 271.090 Submission of Street Vacation Petition to City***

11. **Review Criteria:** "The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The petition has been submitted to the City, and Polygon has been informed of the hearing dates before the Development Review Board and City Council.

#### ***ORS 271.100 City Action of Street Vacation Petition***

12. **Review Criteria:** "The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition."

**Finding:** These criteria are satisfied.

**Details of Finding:** The vacation of these portions of SW 110<sup>th</sup> have long been showed in City adopted master plans and a development application was approved by the City to develop the vacated right-of-way contingent on approval of the vacation. The City is setting and holding public hearings to consider the petition.

#### ***ORS 271.110 Notice of Hearing***

13. **Review Criteria:** This section prescribes the notices required for street vacation hearings including newspaper publication and posting of notices along the right-of-way to be vacated.

**Finding:** These criteria are satisfied.

**Details of Finding:** The noticing requirements required by ORS 271.110 have or will be met prior to the hearing.



### ***ORS 271.120 Hearing; determination***

14. **Review Criteria:** "At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest."

**Finding:** These criteria are satisfied.

**Details of Finding:** The consent of the owners of the requisite area have been obtained as shown with the attached petitions, notice has been given as prescribed. Public policy, as shown in the Villebois Village Master Plan and Transportation Systems Plan, has long been to vacate the proposed area upon replacement with streets planned as part of the Villebois development. After receiving a recommendation from the Development Review Board the City Council would vacate the street by ordinance.

### ***ORS 271.140 Title to Vacated Areas***

15. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the title to portions of the street to be vacated will be attached to the lands bordering the subject area in equal portions.

### ***ORS 271.150 Vacation Records to be Filed***

16. **Review Criteria:** "The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city."

**Finding:** These criteria are satisfied.

**Details of Finding:** It is understood the ordinance will be recorded as required by this section, the cost of which will be borne by the petitioner.



**CITY OF WILSONVILLE  
CITY COUNCIL  
NOTICE OF PUBLIC HEARING**

**PUBLIC NOTICE IS HEREBY GIVEN** that the Wilsonville City Council will conduct a public hearing on **March 3, 2014**, 7 p.m. at City Hall, 29799 SW Town Center Loop, Wilsonville, Oregon.

The purpose of this public hearing is to consider public testimony on a proposed ordinance entitled:

**Ordinance No. 736, AN ORDINANCE OF THE CITY OF WILSONVILLE DECLARING AND AUTHORIZING THE VACATION OF THREE (3) PORTIONS OF SW 110<sup>th</sup> AVENUE PUBLIC STREET RIGHT-OF-WAY BETWEEN SW MONT BLANCE STREET AND SW TOOZE ROAD/SW BOECKMAN ROAD IN VILLEBOIS LEGALLY DESCRIBED IN ATTACHMENT C**

Copies may be obtained at a cost of 25 cents per page, at City Hall or by calling the City Recorder at 503-570-1506 and requesting a copy to be mailed to you.

Specific suggestions or questions concerning the proposed ordinance may be directed to Dan Pauly, at 503-570-1536. Public testimony, both oral and written will be accepted at the public hearing. Written statements are encouraged and may be submitted to Sandra C. King, MMC, City Recorder, 29799 SW Town Center Loop E, Wilsonville, OR 97070.

Assistive listening devices are available for persons with impaired hearing and can be scheduled for this meeting. The City will endeavor to provide qualified sign language interpreters without cost if requested at least 48 hours prior to the meeting. To obtain such services call the office of the City Recorder at 682-1011.

Published in the Wilsonville Spokesman March 26, 2014.

**City of Wilsonville  
City Council Meeting  
March 3, 2014 Sign In Sheet**

[illegible]



# City of Wilsonville

## March 3, 2014 City Council Meeting Action Minutes

COUNCILORS	STAFF	STAFF
Mayor Knapp - Excused	Bryan Cosgrove	Barbara Jacobson
Councilor Goddard	Mike Kohlhoff	Steve Adams
Councilor Starr	Jeanna Troha	Chris Neamtzu
Councilor Fitzgerald	Sandra King	Jon Gail
Councilor Stevens	Stephan Lashbrook	Dan Pauly
	Nancy Kraushaar	Andrea Handran
	Joanne Ossanna	

AGENDA	ACTIONS
<b>WORK SESSION</b>	
<ul style="list-style-type: none"> <li>Council Concerns <ul style="list-style-type: none"> <li>Goddard – has seen Wilsonville Road traffic turning south onto Boones Ferry Rd. on the wrong side of the median and into oncoming traffic; trees may be blocking drivers' view.</li> </ul> </li> <li>Wayfinding Update</li> </ul>	Staff presented an update on the process, timeline and benefits of a community-wide wayfinding program.
<b>REGULAR MEETING</b>	
<u>Mayor's Business</u>	None
<u>Communications</u>	
<ul style="list-style-type: none"> <li>Robotics Team 1425 Error Code Xero Robotics</li> <li>Sgt. Brad O'Neal</li> <li>Wilsonville High School Acappella Group</li> </ul>	<p>Members of Wilsonville High School Robotics Team thanked Council for the 2013 donation and announced a Robotics District event will be held at the High School March 21-22, 2014.</p> <p>Sgt. O'Neal of CCSD was introduced to the Councilors.</p> <p>A YouTube video was shown highlighting the High School Acappella Group Soul-D Out</p>
<u>New Business</u>	
<ul style="list-style-type: none"> <li>Set Hearing Date for Human Bean Appeal of DRB Decision</li> </ul>	Hearing date set for March 17, 2014
<u>Public Hearing</u>	
<ul style="list-style-type: none"> <li>Ordinance No. 736 – Vacating portions of SW 110<sup>th</sup> Ave.</li> </ul>	Approved 4-0 on first reading
<u>City Manager's Business</u>	No report.
<u>Legal Business</u>	No report.
Adjourn 8:10 p.m.	

**RECORDED BY: SCK**