

After Recording Return to:

Margaret Hawker  
City Recorder  
City of Newport  
169 SW Coast Hwy  
Newport, OR 97365

CITY OF NEWPORT  
ORDINANCE NO. 2044

AN ORDINANCE REPEALING AND REPLACING  
ORDINANCE NO. 2018, VACATING SE 1<sup>ST</sup> STREET BETWEEN  
S COAST HIGHWAY AND SE AVERY STREET,  
AND DECLARING AN EMERGENCY

Summary of Findings:

1. A petition to vacate the 60 foot public road right-of-way for SE 1<sup>st</sup> Street between S Coast Highway and SE Avery Street, and the associated 42 foot paved road surface, curb, gutter and sidewalk, was initiated by Mark McKechnie, Oregon Architecture, Inc. on April 18, 2011. The petition lists Thomas Fox Properties as the applicant and Joachim P. and C. Jean Statz as the owners.
2. These same parties executed a real estate transaction on December 29, 2010 in which real property abutting the subject right of way was conveyed to HT Statz Company, LLC, a Utah limited liability company, as to an undivided 1/3 interest; FB Statz Company, LLC, a Utah limited liability company, as to an undivided 1/3 interest; and UGF, Inc., 401(K) Profit Sharing Plan Trust F/B/O John E. Batzer Roth, as to an undivided 1/3 interest, together as tenants in common (Instrument #2010-13250).
3. The Planning Commission of the City of Newport held a public hearing on May 25, 2011, for the purpose of reviewing the proposed request and providing a recommendation to the City Council. Notice of the hearing was provided in the Newport News-Times on May 6, 2011 and May 13, 2011. Affected property owners received mail notice of the hearing on May 3, 2011. The Planning Commission public hearing was held in accordance with the appropriate provisions of the Newport Zoning Ordinance and, after due deliberation and consideration of the proposed vacation, the Planning Commission, by a 3-1 vote, recommended that the proposed street vacation be approved, provided:
  - a. A public access easement be prepared, in a format acceptable to the City Attorney, covering the internal drive isle between SE Avery Street and SE Cape Street. The easement document should include language prohibiting vehicles from parking in the easement area; and
  - b. The applicant and/or property owner, at their expense, be required to relocate city utilities within the vacated portion of SE 1<sup>st</sup> Street in a manner acceptable to

the City Engineer; and

c. The applicant prepare a traffic study to confirm that ingress/egress to the site from Highway 101 and Highway 20 will occur in a safe and efficient manner, considering growth in background traffic. The study shall also consider the effect of the street vacation on the City's future plans to construct SE 1<sup>st</sup> Street between SE Douglas Street and SE Fogarty Street to create an alternative means for local traffic to reach Highway 101 without utilizing Highway 20.

4. It has been determined that, at the present time, no City liens are existing or unpaid against the property to be vacated and, by virtue of the fact that it is a dedicated right-of-way, no taxes are unpaid thereon.

5. The City Council fixed June 20, 2011, at 7 p.m. at the Newport City Hall, 169 SW Coast Highway, Newport, Oregon, as the time and place for a formal public hearing regarding the vacation.

6. The City Recorder gave notice of the public hearing by publishing a notice in the Newport News-Times newspaper once each week for two consecutive weeks on June 8, 2011 and June 15, 2011 which notice described the ground proposed to be vacated, the date the petition was filed, the name of at least one of the petitioners, the date of the public hearing, and the requirement that written objections or remonstrances must be filed with the City Recorder for the City of Newport prior to the time of the hearing, in accordance with ORS 271.110(1). Affected property owners received mail notice of the hearing on June 2, 2011.

7. Within five (5) days after the first day of publication of said notice in the newspaper and not less than fourteen (14) days before the hearing date, the City Recorder caused a copy of the notice to be posted in at least two (2) conspicuous places at or near each end of the proposed vacation, in accordance with ORS 271.110(2).

8. On June 20, 2011 at 7 p.m. at the Newport City Hall, the City Council held a public hearing in the Council Chambers on the vacation of the area described above and heard any written objections filed thereto, and heard oral testimony from members of the public in favor of and/or in opposition to said vacation.

9. The owners of the majority of the area affected, computed on the basis provided in ORS 271.080, did not object in writing to the proposed vacation.

10. The City Council made a determination after considering the recommendation of the Planning Commission, the Planning Staff Report, and the evidence and argument presented at the public hearings and in the record, that the request is in compliance with the applicable criteria and voted to proceed with the street vacation.

11. The Newport City Council found the public interest will not be prejudiced by the proposed vacation under the Planning Commission's conditions, for the following reasons:

a. By granting a public access easement to the City over the internal drive areas depicted on Exhibit A, the property owner is providing highway access to neighboring properties in a manner that is equivalent to what is currently

available via the portion of SE 1<sup>st</sup> Street that is to be vacated; and

b. Traffic analysis prepared by JRH Transportation Engineering, dated June 10, 2011 and June 14, 2011, establishes that ingress/egress to the site from Highway 101 and Highway 20 as depicted on Exhibit A will occur in a safe and efficient manner and that vacation of the right-of-way will not prevent the City from establishing an alternative means for local traffic to reach Highway 101 without utilizing Highway 20; and

c. The property owner is appropriately bearing the cost of relocating the existing 6 inch water line and storm drainage infrastructure within the portion of SE 1<sup>st</sup> Street that is to be vacated, to the vicinity of the new internal drive area, or under a utility easement, or to another location deemed appropriate by the City Engineer; and

d. While there is a substantial public investment in this fully developed street right-of-way, the loss of that right-of-way is offset by the alternative access, as noted above, and the redevelopment of the vacant and dated buildings at this location with a new Walgreens and its associated landscaping, pedestrian access, and lighting amenities; and

e. To ensure that the public interest is not prejudiced it is appropriate to make the vacation of this right-of-way contingent upon the successful completion of the Walgreens development.

12. While newspaper notice of the June 20, 2011 hearing was provided two consecutive weeks prior to the hearing, ORS 271.110(2) also requires that the first day of publication be at least 14 days prior to the hearing. The June 8, 2011 date fell short of this requirement. As a remedy a second hearing was held on July 18, 2011 at 7:00 pm for which notice in the Newport News-Times newspaper was provided once each week for three consecutive weeks on July 1, 2011, July 6, 2011 and July 13, 2011. This allowed the first date of notice to occur at least 14 days prior to the hearing. Notice was also posted along the subject right-of-way in a manner consistent with ORS 271.110.

13. On July 18, 2011, Ordinance No. 2018 was adopted, vacating the subject right-of-way effective upon several conditions—one of which required issuance of a certificate of occupancy for the Walgreen's store.

14. On September 24, 2012, Thomas Fox Properties, a property owner, informed the City that the lender they are using to finance construction of the Walgreens store is concerned about lending funds for work within a right-of-way that does not vacate until a certificate of occupancy is issued.

15. Thomas Fox Properties has requested that the City repeal and replace Ordinance No. 2018, and instead immediately vacate the right-of-way. As a property owner, Thomas Fox Properties proposed to enter into an improvement agreement with the City of Newport to guarantee that the right-of-way would be rededicated and street rebuilt if the Walgreens store is not constructed.

16. The proposal by Thomas Fox Properties addresses its lenders concerns, while ensuring that the substantial public investment in this fully developed street right-of-way is protected.

17. Further evidence of consent from owners of the majority of the affected area affected, computed on the basis provided in ORS 271.080, is unnecessary because the City has already vacated the right-of-way. This action maintains that same vacation, while modifying its timing and contingencies. Timing has no bearing on the consents previously granted under ORS 271.080(2).

18. The City Council fixed October 15, 2012, at 7 p.m. at the Newport City Hall as the time and place for a formal public hearing on the proposal to repeal and replace Ordinance No. 2018. At Thomas Fox Properties request, the hearing was continued to November 5, 2012.

19. The City Recorder gave notice of the public hearing by publishing a notice in the Newport News-Times newspaper once each week for two consecutive weeks on October 3, 2012 and October 10, 2012 in accordance with ORS 271.110(1). An additional notice was published in the News-Times newspaper on September 28, 2012 to satisfy the ORS 271.110(2) requirement that the first day of publication occur at least 14 days prior to the hearing. Notice was also posted along the subject right-of-way in a manner consistent with ORS 271.110.

20. The City Council, after considering public testimony and information in the record, finds the public interest will not be prejudiced by making the requested change to the timing of the street vacation and that repealing and replacing Ordinance No. 2018 is the most straightforward way to effect that change.

21. Thomas Fox Properties advises that waiting 30 days after ordinance adoption, per City Charter § 17 will create a significant financial burden for applicant, due to the extent of development undertaken before Applicant's lender raised its concerns. Existing buildings have been demolished, the site has been graded, and the public street has been partially removed. The City Council concurs that a 30-day delay would impose an undue hardship on Thomas Fox Properties and leave the property in a condition that impairs the public health, safety and welfare of the community. Further, the Council finds that the street vacation has already been adopted once through the normal process with ample opportunity for objections to be raised; therefore, it is appropriate in this instance for an emergency to be declared so that this ordinance can take effect immediately upon recordation of the agreed upon easement and improvement agreement.

**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1. Street portions to be vacated.** That portion of SE 1<sup>st</sup> Street between S Coast Highway and SE Avery Street, as more particularly described below, is hereby vacated and title shall vest in the owners of the land bordering the vacated right-of-way in equal portions, in accordance with ORS 271.140:

A portion of the Southeast 1<sup>st</sup> Street right-of-way lying between South Cape

Street and Southeast Avery Street in the Fredricksburg subdivision located in the NW ¼ of the NE ¼ of Section 8, Township 11 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon, more particularly described as follows:

Beginning at the Southwest corner of Block 14 of the aforementioned subdivision, which is on the East right-of-way line of South Cape Street and the North right-of-way line of Southeast 1<sup>st</sup> Street; Thence East 180 feet along the South line of Block 14 to the Southeast corner of Block 14, said Southeast corner being the intersection of said South line of Block 14 and the West right-of-way line of Southeast Avery Street; Thence South 60 feet along the South extension of said West right-of-way line of Southeast Avery Street to the Northeast corner of Block 13 of said subdivision; Thence West 180 feet along the North line of Block 13 to the Northwest corner of Block 13, said Northwest corner being the intersection of said North line of Block 13 and the East right-of-way line of South Cape Street; Thence North 60 feet along the North extension of said East right-of-way line of South Cape Street to the Point of Beginning, containing an area of 10,800 square feet, more or less.

Section 2. Reservation of Easement and relocation of city utilities. A public utility easement is hereby reserved over the vacated segment of SE 1<sup>st</sup> Street described in Section 1 of this ordinance. Such easement shall remain in effect until such time as the existing 6-inch public water line and public storm drainage infrastructure is relocated to the public access and utility easement area depicted in the attached Exhibit "A," in a manner acceptable to the City Engineer.

Section 3. Public access and utility easement. The vacation addressed in Section 1 of this ordinance is contingent upon the property owner dedicating a public access and utility easement over the internal drive areas depicted on Exhibit "A." Such easement shall be in the form attached as Exhibit "B," and shall be subject to the review and approval of the City Attorney prior to the property owner recording it with the Lincoln County Clerk's office.

Section 4. Authorization of work within the right-of-way. City of Newport staff is hereby authorized to issue permits as needed to facilitate the construction of a Walgreens store and its associated improvements as generally depicted on Exhibit "A," pursuant to City land use and development regulations.

Section 5. Findings. The findings attached as Exhibit "C," as supplemented herein, are hereby adopted as support for the requested vacation.

Section 6. Failure to complete development. In the event that the Walgreens development is not completed within 2 years after adoption of this ordinance, Thomas Fox Properties will be responsible for restoring the right-of-way and road to its current or equivalent condition, as outlined in the improvement agreement attached as Exhibit "D." The vacation addressed in Section 1 of this Ordinance is contingent upon the property owner executing and recording said improvement agreement.

Section 7. Recording. The City Recorder is hereby directed to file certified copies of this ordinance for recording with the Lincoln County Records division, the County Assessor, and the County Surveyor at such time as this ordinance goes into effect.

Section 8. Repeal. Ordinance No. 2018 is hereby repealed.

Section 9. Declaration of Emergency. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Newport. Therefore, an emergency is declared to exist, such that this ordinance and all its provisions relating to vacating a portion of SE 1<sup>st</sup> Street between S Coast Highway and SE Avery Street shall take effect immediately upon the execution and recordation of the public access and utility easement and improvement agreement referenced in Sections 3 and 5 of this ordinance.

Date adopted and read by title only: November 5, 2012.

Signed by the Mayor on November 6, 2012.

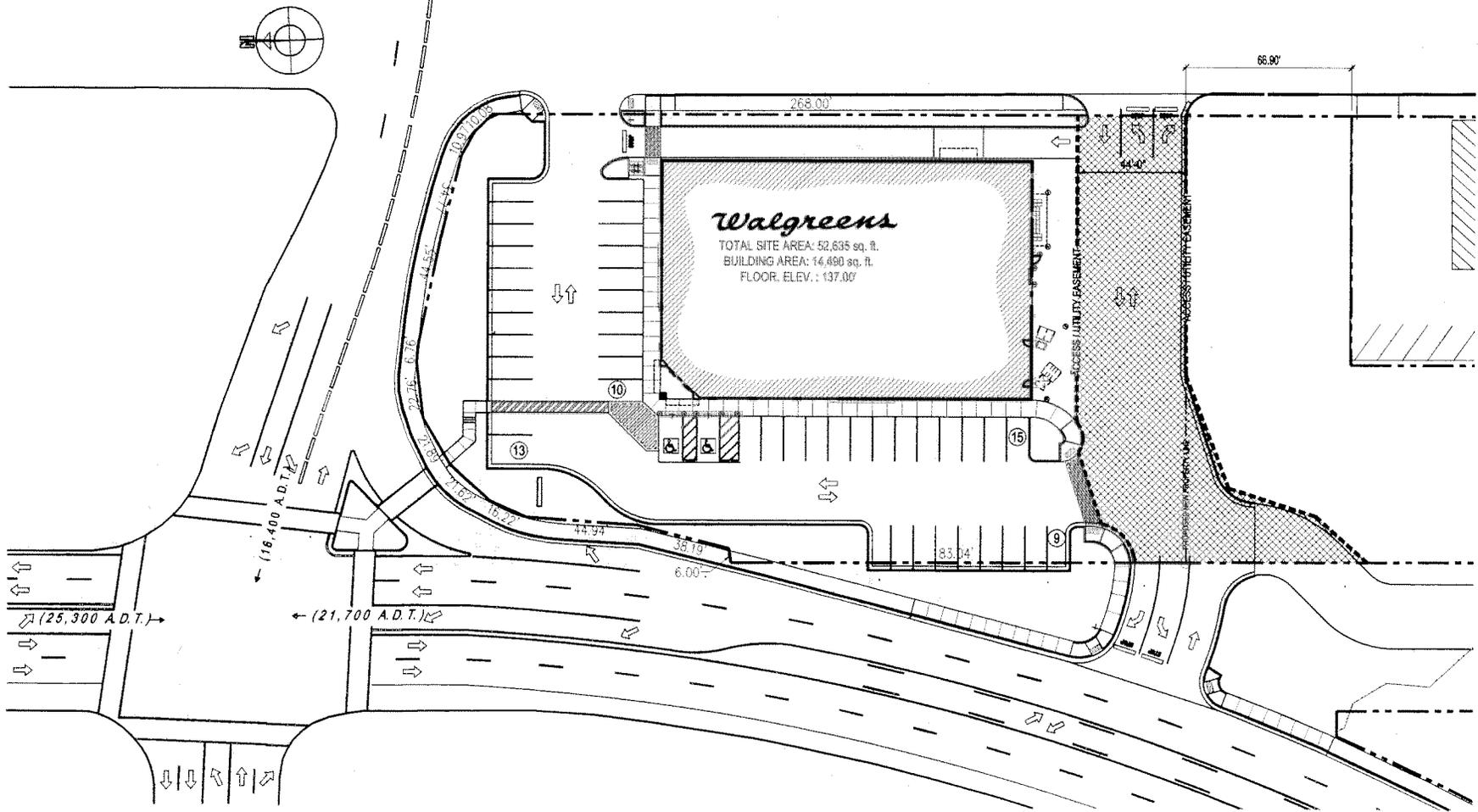
  
\_\_\_\_\_  
Mark McConnell, Mayor

ATTEST:

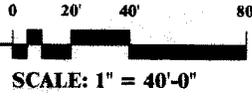
  
\_\_\_\_\_  
Margaret M. Hawker, City Recorder

**EXHIBIT A**

Ordinance No. 2044  
 Partial vacation of 1st Street  
 (File #2-SV-11)



**1 SITE EASEMENT PLAN**  
 1" = 40'-0"



TO VERIFY PLOTTED SCALE  
 0" 1"  
 BAR TO MEASURE ONE INCH BY ONE SIXTEENTH INCH

THIS DOCUMENT, IN WHOLE OR IN PART, IS THE PROPERTY OF THOMAS FOX PROPERTIES, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. WITHOUT THE WRITTEN AUTHORIZATION OF THOMAS FOX PROPERTIES, INC., NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.

**WALGREENS - NEWPORT**  
 THOMAS FOX PROPERTIES  
 101 West State Street, 2nd  
 Newport, Oregon

PROJECT NO.	113-11
DATE	1/13/11
DRAWN BY	E. HENNING
CHECKED BY	
DATE	
SCALE	

**SE-1**  
 SITE EASEMENT PLAN

## EXHIBIT "B"

Ordinance #2044  
Partial vacation of 1st Street  
(File #2-SV-11)

### After recording return to:

City of Newport  
169 SW Coast Highway  
Newport, OR 97365

### CITY OF NEWPORT, OREGON PUBLIC ACCESS AND UTILITY EASEMENT

\_\_\_\_\_, hereinafter referred to as "Grantor", owns the real property described below and does hereby give and grant unto the City of Newport, an Oregon Municipal Corporation of Lincoln County, Oregon, hereinafter referred to as "Grantee", a non-exclusive, perpetual easement for public access and public utilities, including the right to lay, construct, and maintain any water mains and storm drainage lines, and all related appurtenances, hereinafter referred to as "Public Utilities", to be constructed and located on, across, under or over the surface of the following described real property:

An access and utility easement located in the Fredricksburg subdivision located in the City of Newport, Lincoln County in Township 11 South Range 11 West, Section 8 of the Willamette Meridian, described as follows:

Beginning at the Northwest corner of Block 13 of the aforementioned subdivision; Thence S2° 45' 53"W 6.80 feet, to the true point of beginning;

Thence S2° 45' 53"W 95.32 feet along the East right-of-way line of Southeast Cape Street; Thence N44° 48' 52"E 28.06 feet; Thence N20° 51' 01"E 36.91 feet; Thence N72° 45' 18"E 51.01 feet; Thence S87° 01' 47"E 103.03 feet, to the West right-of-way line of Southeast Avery Street; Thence N2° 58' 13"E 44.00 feet, along the West right-of-way line of Southeast Avery Street and its north extension; Thence N87° 01' 47"W 124.18 feet; Thence 13.45 feet along a non-tangential curve to the right with a radius of 10.00 feet, the long chord of which bears S88° 52' 27"W 12.46 feet; Thence S74° 45' 18"W 32.16 feet; Thence 19.31 feet along a non-tangential curve to the right with a radius of 16.00 feet, the long chord of which bears S54° 05' 11"W 18.16 feet, to the true point of beginning; containing an area of 9,515 square feet, more or less. Bearings and distances are based on the right-of-way network established in CS 16076, recorded in Lincoln County Survey Records.

Grantor does covenant and agree that the easement area described herein may be utilized by Grantee, its agents and employees, and the general public for unrestricted ingress and egress to Grantor's property for the purpose of accessing said property or other real property in the area.

Grantee and its contractors, subcontractors, agents or employees shall have the right to enter and occupy the easement for the purpose of constructing, operating and maintaining the Public Utilities, including inspection, repair, replacement, removal or renovation of the Public Utilities.

Grantor shall be responsible for constructing a paved road surface, curbs, sidewalk, striping, signage and landscaping within the easement area as approved by Grantee. Grantor further agrees to maintain the easement area in a manner that does not impede vehicle and pedestrian movement, including prohibiting vehicles from parking therein. Balm, poplar, locust, cottonwood or willow trees should not be planted near the easement. It is understood that Grantee may remove any physical obstructions including buildings, fences, trees, or shrubbery, and abate any use of the easement if Grantee finds that the physical obstruction or use will interfere with the Public Utilities or Grantee's easement rights granted above, without recompense to the Grantor.

Grantor and Grantee intend that this easement bind Grantor, his or her heirs, successors and assigns. This easement will not be considered abandoned until Grantee has declared the easement abandoned and no longer in use by City, and releases this easement in a duly executed and recorded Release of Easement.

In addition to all other remedies allowed by law, Grantee, its successors and assigns, shall have the right to seek injunctive relief for the enforcement of the terms and conditions of this easement against Grantor. If either party brings suit or action to enforce the terms of this easement, the prevailing party shall be entitled to recover such sums as the court may adjudge reasonable as attorney fees and costs in such suit or action, or upon appeal.

The true and actual consideration for this easement is \$\_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Owner

STATE OF OREGON )

County of Lincoln

} ss

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012 the above named \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon

**ACCEPTANCE OF EASEMENT**

The City of Newport, Oregon, does hereby accept the above-described Public Utility Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mark McConnell, Mayor

STATE OF OREGON )

County of Lane ) ss:

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2012 by Mark McConnell as Mayor of the City of Newport.

\_\_\_\_\_  
Notary Public for Oregon

N87°30'38"W 181.54'

POINT OF BEGINNING

SE 1ST ST

S2° 45' 53"W  
6.80'

S74° 45' 18"W C1  
32.16'

N87° 01' 47"W  
124.18'

ACCESS EASEMENT  
9515 SQ FT  
0.22 ACRES

N87°30'38"W 181.32'

44.00'

N2° 58' 13"E

103.03'  
S87° 01' 47"E

51.01'  
N72° 45' 18"E

36.91'  
N20° 51' 01"E

95.32'  
S2° 45' 53"W

28.06'  
N44° 48' 52"E

BLOCK 13

SE CAPE ST

SE AVERY ST

S2°45'53"W 191.09'

N2°58'13"E 190.89'

Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	13.45	10.00	77° 05' 02"	S88° 52' 27"W	12.46
C2	19.31	16.00	69° 08' 10"	S54° 05' 11"W	18.16

SE 2ND ST

DATE 7/14/11

SCALE 1" = 30'

DRAWN PJS

FILE 10098

ACCESS EASEMENT

SHEET

OF SHEETS

**EXHIBIT "C"**  
Ordinance No. 2044  
(File No. 2-SV-11)

**FINDINGS OF FACT AND CONCLUSIONS**

**FINDINGS OF FACT**

1. Mark McKechnie, Oregon Architecture, Inc., on behalf of applicant Thomas Fox Properties and owners Joachim P. & C. Jean Statz, are seeking to vacate a 60-foot wide road right-of-way for SE 1<sup>st</sup> Street between S Coast Highway and SE Avery Street. The request was made as a petition pursuant to Oregon Revised Statute (ORS) 271.080 et. seq. on April 18, 2011.
2. Properties abutting the subject right-of-way are identified as Tax Lots 9500, 9800, 10200, and 10500 of Assessor's Tax Map 11-11-08-AB.
3. These same parties executed a real estate transaction on December 29, 2010 in which the real property abutting the subject right of way was conveyed to HT Statz Company, LLC, a Utah limited liability company, as to an undivided 1/3 interest; FB Statz Company, LLC, a Utah ), limited liability company, as to an undivided 1/3 interest; and UGF, Inc., 401(K) Profit Sharing Plan Trust F/B/O John E. Batzer Roth, as to an undivided 1/3 interest, together as tenants in common (Instrument #2010-13250).
4. The Planning Commission held a duly noticed public hearing on the proposed street vacation on May 25, 2011. Testimony was received from the applicant, who explained that they are looking to vacate the right-of-way so that they can construct a Walgreens store. The Planning Commission voted 3-1 in favor of forwarding a recommendation to the City Council to approve the street vacation with the following conditions:
  - A. That a public access easement be provided, in a format acceptable to the City Attorney, covering the internal drive isle between SE Avery Street and SE Cape Street. The easement document should include language prohibiting vehicles from parking within the easement area; and
  - B. That the applicant and/or property owner, at their expense, be required to relocate city utilities within the vacated portion of SE 1st Street in a manner acceptable to the City Engineer; and
  - C. That the applicants prepare a traffic study to confirm that ingress/egress to the site from Highway 101 and Highway 20 will occur in a safe and efficient manner, considering growth in background traffic. The study shall also consider the effect of the street vacation on the City's future plans to construct SE 1st Street between SE Douglas Street and SE Fogarty Street to create an alternative means for local traffic to reach Highway 101 without utilizing Highway 20.

5. A Planning Staff Report with attachments was prepared for the Planning Commission and City Council public hearings. The Planning Staff Report and attachments are hereby incorporated by reference into the findings. The Planning Staff Report contained the following attachments:

- Attachment "A" – Letter of Application & Application Form
- Attachment "A-1" – Conceptual Site Plan
- Attachment "A-2" – Applicant Findings Regarding Public Interest
- Attachment "A-3" – Plant Service Report for Vacation Area
- Attachment "A-4" – Map Showing Vacation Area & Consenting Properties
- Attachment "A-5" – List of Property Owners Receiving Notice
- Attachment "B" – Public Hearing Notice and Map
- Attachment "C" – Zoning Map of Area
- Attachment "D" – Aerial Map of the Property

6. The Planning Staff Report contained the following facts in regard to the proposed street vacation:

- A. **Plan Designation:** Commercial.
- B. **Zone Designation:** C-3/"Heavy Commercial".
- C. **Surrounding Land Uses:** Surrounding uses include other heavy commercial uses to the east, northeast, north, and south; retail and service commercial uses to the west, north, and southwest; and public structures to the south and southeast.
- D. **Topography and Vegetation:** The applicant notes that the site slopes gradually from northwest to southeast. There is no site vegetation.
- E. **Existing Structures:** A vacant 10,810 square-foot auto repair garage and a vacant 10,267 square foot auto showroom.
- F. **Utilities:** All are available to the site.
- G. **Development Constraints:** None known.
- H. **Past Land Use Actions:**

File No. 1-SV-10 – A request that the City Council initiate a street vacation for a portion of SE 1<sup>st</sup> St. (superseded File No. 1-SV-09). The action was dropped by the applicant and never reached a conclusion.

File No. 1-SV-09 – A request that the City Council initiate a street vacation for a portion of SE 1<sup>st</sup> St. (superseded by File No. 1-SV-10). The action was dropped by the applicant and never reached a conclusion.

- I. **Notification:** Notification to surrounding property owners, to City departments,

and to public/private utilities/agencies was mailed on May 3, 2011. See Planning Staff Report Attachment "B" (Public Hearing Notice and Map). Notification distance is as specified in ORS 271.080(2) for street vacations. The notice of Planning Commission public hearing for the request was also published in the Newport News-Times on May 6, 2011, and May 13, 2011. Notice was also posted at or near each end of the proposed vacation consistent with ORS 271.110(2).

7. Written comments received as of the May 25, 2011 public hearing included the following:

- A. Letter from Tom Hamilton, Lincoln County Surveyor, requesting that the street vacation request be denied due to a loss of vehicle access onto Highway 101.
- B. Letter from Gerald Risberg, RIS-RENTS, LLC, expressing concerns about the potential loss of customer access to and from his property to Highway 101.

8. The City Council opened the public hearing on June 20, 2011. The City Council heard a report from staff, and heard testimony from the Brent Fox and Brian Genovese representing the applicant. Testimony was also provided by Carla Perry, Wendy Engler, and Jerry Risberg. After considering the testimony the Council voted unanimously in favor of moving ahead with the street vacation and directed staff to prepare an implementing ordinance. The minutes of the June 20, 2011 City Council meeting are hereby incorporated by reference into the findings.

9. The City Council finds that ORS 271.120 sets out three criteria for granting or denying a street vacation petition. Those criteria are as follows:

- A. Whether the consent of the owners of the requisite area *[as defined in ORS 271.080 (2)]* has been obtained;
- B. Whether notice has been duly given *[for the public hearing before the City Council]*; and
- C. Whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof.

The statute further notes that the governing body may, upon hearing, grant the petition in part and deny in part, and make such reservations, or either, as appear to be for the public interest.

10. The City Council acknowledges that while newspaper notice of the June 20, 2011 hearing was provided two consecutive weeks prior to the hearing, ORS 271.110(2) also requires that the first day of publication be at least 14 days prior to the hearing. The June 8, 2011 date fell short of this requirement. As a remedy a second hearing was held on July 18, 2011 for which notice in the Newport News-Times newspaper was provided once each week for three consecutive weeks on July 1, 2011, July 6, 2011 and July 13, 2011. This allowed the first date of notice to occur at least 14 days prior to the hearing. Notice was also posted along the subject right-of-way in a manner consistent with ORS 271.110. Interested parties were given an opportunity to testify and minutes from the July 18, 2011 City Council meeting are hereby incorporated by reference into the findings.

**CONCLUSIONS**

1. Whether the consent of the owners of the requisite area [as defined in ORS 271.080(2)] have been obtained; and,

On April 18, 2011, the applicant submitted the names and addresses of abutting property owners along with their original, notarized signatures indicating consent for the street vacation. These documents are available in the case file. ORS 271.080 (2) requires “the consent of the owners of the abutting property and not less than two-thirds in area of the real property affected thereby.” Written notarized consents were submitted from property owners as follows:

**Assessor's Map 11-11-08-AB**

<b><u>TAX LOT</u></b>	<b><u>OWNER</u></b>
09500	Joachim P & Clara Jeanette Statz
09600	Joachim P & Clara Jeanette Statz
09700	Joachim P & Clara Jeanette Statz
09701	Joachim P & Clara Jeanette Statz
09800	Joachim P & Clara Jeanette Statz
10200	Joachim P & Clara Jeanette Statz
10500	Joachim P & Clara Jeanette Statz
10600	Joachim P & Clara Jeanette Statz
15300	Truax Corporation
15800	S & L Investments, LLC
14700	S & L Investments, LLC
15900	S & L Investments, LLC
09100	Raymond G & Robyn S Vance
08700	Karen Gayle Dieckman
08800	Karen Gayle Dieckman
14800	Bank of America
14900	Bank of America
11200	Sheila Swadell Trust
11400	Sheila Swadell Trust
11401	Sheila Swadell Trust
11402	Sheila Swadell Trust
09200	New Yak Aerie #2817, Fraternal Order of Eagles
09300	New Yak Aerie #2817, Fraternal Order of Eagles
09400	New Yak Aerie #2817, Fraternal Order of Eagles
08900	Janet Clay
09000	Janet Clay
11300	Norma L. Hamilton
11301	Norma L. Hamilton

The notification area under ORS 271.080 extends 200 feet to either side of the right-of-way being vacated, and a distance of 400 feet from the terminal ends of the right of way being vacated. This creates a rectangular shaped notification area (see Planning Staff Report Attachment "A-4"). As noted, consent must be obtained from the owners of two-thirds of the real property (excluding right-of-way) within the notice boundary. In the subject circumstances, consent has been obtained for over 91% of the properties in the notification area (Staff report Attachment "A-5"). The only properties where consent was not obtained are Tax Lots 10700,

10800, 11000, and 11100. This information is adequate to establish that the required level of ownership consent has been obtained.

2. Whether notice has been duly given [for the public hearing before the City Council]; and,

Notice of the May 25, 2011 Planning Commission hearing was provided via direct mail and notice in the Newport News-Times newspaper advising the public and utilities of the petition request. The same notice was provided for the June 20, 2011 City Council meeting, along with notices posted on the property pursuant to the requirements of ORS 271.110.

While newspaper notice of the June 20, 2011 hearing was provided two consecutive weeks prior to the hearing, ORS 271.110(2) also requires that the first day of publication be at least 14 days prior to the hearing. The June 8, 2011 date fell short of this requirement. As a remedy a second hearing was held on July 18, 2011 for which notice in the Newport News-Times newspaper was provided once each week for three consecutive weeks on July 1, 2011, July 6, 2011 and July 13, 2011. This allowed the first date of notice to occur at least 14 days prior to the hearing. Notice of the July 18, 2011 hearing was also posted along the subject right-of-way in a manner consistent with ORS 271.110.

Considering the above, the City Council concludes that the statutory notice requirements have been followed.

3. Whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof.

The applicant in the proposed findings states that the public interest will not be negatively impacted. The applicant contends that the public interest will be better served by the vacation and explains why.

First, they note that the low volume that presently uses this portion of SE 1<sup>st</sup> Street is primarily local "cut-thru" traffic for area residents. It is also used by emergency vehicles needing to avoid congestion at the intersection of Highways 20 and 101. Unfortunately, traffic in the northbound lanes often backs up past SE 1<sup>st</sup> Street from the light and impedes the flow of emergency vehicles. The proposal will shift the SE Cape Street approach slightly to the north so that a drive isle internal to the development can tie into it and provide access to the property. A public access easement will be granted over the drive isle so that it will still function as a "cut-thru" for local and emergency vehicles.

Also, the current location of the SE 1<sup>st</sup> Street access point does not meet intersection spacing standards identified in the Oregon Highway Plan and the Newport Transportation System Plan. The applicant contends that closure of this access point will benefit the public through increased efficiency in traffic flow.

In addition, the applicant notes that the buildings located on either side of the existing right-of-way have entrances onto S Coast Highway. These entrances will be closed in favor of access only through the SE Cape Street right-of-way. This will be a benefit because three existing

access points will be eliminated in favor of only one, which means fewer opportunities for accidents. Elimination of two access points onto Highway 101 is consistent with the access management policies of the Newport TSP and Zoning Ordinance (NZO 2-3-6.060), which looks to improve driveway and road spacing when redevelopment occurs.

The development also proposes to upgrade the SE Cape Street access into a full-size, three-lane approach onto S Coast Highway. Traffic will be controlled with stop signs.

The applicant notes that more than 91% of the property owners in the neighborhood notification area approved the vacation with their signed and notarized consent forms that were included with the application. Among the reasons given for the overwhelming neighborhood support was the need to revitalize this area, increase business presence, and to modernize the existing infrastructure.

The applicant explains that the proposed development on their property would include demolition of the two existing buildings, which are approximately 50 years old and in need of immediate replacement. The new proposed Walgreens store will be constructed of quality materials; will have state-of-the-art exterior lighting, pedestrian friendly sidewalks, and reinvigorated landscaping. Pedestrian and bicycle connectivity would be maintained as identified in the Newport Pedestrian and Bicycle Plan adopted in July 2008.

The applicant notes that vacation of SE 1<sup>st</sup> Street in this area would eliminate the need for the City to maintain this block of roadway. Walgreens is committed to keeping an access across its property south of the new store, which will be maintained by Walgreens at no cost to the City. Also, the vacation of SE 1<sup>st</sup> Street and the relocation of utilities located within the right-of-way will be accomplished at Walgreens' expense and at no cost to the City.

Because there once had been a gasoline service station on a portion of the property to the north of SE 1<sup>st</sup> Street, and more recently the automobile repair garage, a preliminary environmental test was performed in January 2010, which indicated there may be contaminated soils. Prior to the construction process, any such contamination will be removed and properly tested and documented. This cleanup will positively impact the area and will reduce the likelihood of future ground water contamination in this area of SE 1<sup>st</sup> Street. In addition, storm water from existing parking lot drains on both sides of SE 1<sup>st</sup> Street currently drain untreated into the adjacent City storm water system. Under the proposed Walgreens plan, storm water from the parking areas will be treated prior to making its way into the City storm drainage system.

The applicant notes that if the City approves the proposed street vacation, the vacated land will generate additional property tax revenue. In addition, the construction of the new \$2.5 million Walgreens building and site improvements will increase valuation, enhance tax revenue, and provide needed jobs for the local economy.

In evaluating this request, the City Council considered Access Management Policies 1 and 2 of the Newport TSP which state:

- 1. The City shall implement an access management strategy for the established and*

*developing areas of the City of Newport along Highway 101, Highway 20, and other arterials that supports the City's Transportation Goal and ensures that those streets can accommodate traffic in a safe and efficient manner as traffic increases.*

*2. In established areas of the City of Newport as identified in the TSP, the City shall encourage consolidation or reduction of accesses as possible during property redevelopment and/or frontage improvements. Spacing goals for the established areas are 500 feet for driveways, ¼ mile for public roads, and ½ mile for signals. As redevelopment occurs, these spacing standards and access management tools should be evaluated and applied as appropriate to the specific needs of the project.*

With respect to Policy 1, the Planning Commission recommended that the applicant conduct traffic analysis to confirm that ingress/egress to the site from Highway 101 and Highway 20 will occur in a safe and efficient manner, considering growth in background traffic. The requested analysis was prepared by JRH Transportation Engineering on June 10, 2011 and June 14, 2011. Their work established that traffic movement to and from the site, in particular left turn movements at the access onto Highway 101, can occur safely and efficiently.

As for the Policy 2, the applicant's analysis is adequate to establish that the consolidation objective has been satisfied and that it is impractical to meet the spacing standards given the modest size of the properties in the area and the subject sites proximity to the Highway 101/20 intersection.

The applicant has indicated that they intend to provide a pedestrian connection into the site through the landscaped area at the northwest corner of the property. This will tie into the crosswalk at the Hwy 101/20 intersection and in conjunction with the other pedestrian improvements illustrated on the plan, satisfies the 2008 Bike and Pedestrian Plan's objective of seeing improved pedestrian connections along SE 1<sup>st</sup> Street.

The Newport TSP calls for SE 1<sup>st</sup> Street to be constructed between SE Douglas Street and SE Fogarty Street. This would provide a parallel roadway to Highway 20 so that local traffic from residential areas to the east could reach nearby commercial/public areas and Highway 101 without having to utilize Highway 20. If SE 1<sup>st</sup> Street is vacated at its intersection with Highway 101, as proposed, then this connection cannot occur as envisioned. JRH Transportation Engineering considered this issue in its analysis and established that vacating the right-of-way will not prevent the City from establishing an alternative means for local traffic to reach Highway 101 without utilizing Highway 20 because there are other streets, such as SE Angle Street, where that connection can occur. The drive isle that the applicant will be providing through the development can also serve this purpose.

In developing their concept the applicant met several times with city staff, including the Newport Police Department. The Police Department was initially concerned about parking along the internal drive isle connecting Highway 101 and SE Avery Street, which could cause congestion and delay their response times. The applicant has agreed to prohibit parking along the drive isle, and language to that effect should be included as part of the public access easement.

Given the above, the Council concludes that the public interest will not be prejudiced provided conditions are imposed as outlined below.

### **OVERALL CONCLUSION**

Based on the staff report and other evidence and testimony in the record, the City Council concludes that the requested vacation complies with the criteria established for approval of a vacation under the applicable ORS requirements and approves the street vacation with the following conditions of approval:

1. The property owner shall provide a public access and utility easement, in a format acceptable to the City Attorney, covering the internal drive isle between SE Avery Street and SE Cape Street. The easement document should include language prohibiting vehicles from parking the easement area; and
2. The property owner shall be responsible for relocating the existing 6 inch public water line and public storm drainage infrastructure within the vacated portion of SE 1<sup>st</sup> Street in a manner acceptable to the City Engineer; and
3. To ensure that the public interest is not prejudiced it is appropriate to make the vacation of this right-of-way contingent upon the successful completion of the Walgreens development. Further, in the event the Walgreens development does not proceed, the property owner will be responsible for restoring the SE 1<sup>st</sup> Street right-of-way to its current or equivalent condition.

**After recording return to:**  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365

**IMPROVEMENT AGREEMENT**

(Portion of SE 1<sup>st</sup> St between S Coast Hwy and SE Avery St)

This Improvement Agreement (“Agreement”), relating to the installation of certain Required Improvements (as identified in Section 4 below) for a Walgreens building as required by City of Newport Ordinance No. 2044, is made and entered into this \_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF NEWPORT, OREGON, hereinafter referred to as “City”; and \_\_\_\_\_, hereinafter referred to as “Developer.”

**RECITALS:**

WHEREAS, Developer intends to construct a Walgreens building on property at 27 South Coast Highway contingent upon a portion of SE 1<sup>st</sup> Street being vacated between S Coast Highway and SE Avery Street pursuant to City of Newport Ordinance No. 2044; and

WHEREAS, the subject segment of SE 1<sup>st</sup> is a paved public street with curb and sidewalks that will be removed to accommodate the Walgreens building; and

WHEREAS, Developer agrees to rededicate the vacated portion of SE 1<sup>st</sup> Street and to reconstruct that street to its prior or equivalent condition in the event that the Walgreens building is not constructed, and that this agreement serves as the mechanism by which Developer provides a good and sufficient form of security, to provide for the completion of the required improvements; and

WHEREAS, Required Improvements as defined in Section 4 and as used within this Agreement do not constitute Public Improvements as the term is defined in ORS 279C; and

WHEREAS, vacation of this portion of SE 1<sup>st</sup> Street is contingent upon execution of this improvement agreement as required by Newport Ordinance No. 2044. Once executed, Developer may proceed with construction of the Walgreens building.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES above mentioned, for and in consideration of the mutual promise hereinafter stated, as follows:

1. Recitals. The Recitals to this Agreement set forth above are hereby incorporated herein as if fully set out, shall constitute contractual provisions, and are not mere recitals.
2. Real Property. The real property subject to this Agreement (hereinafter referred to as “Real Property”) is depicted on attached **Exhibit A**.
3. Exhibits. The exhibits set forth below and attached to this Agreement are hereby incorporated herein by reference:
  - a. Exhibit A – Legal description of the vacated right-of-way.
  - b. Exhibit B – 1997 City of Newport Transportation System Plan recommended design standard for collector streets.
  - c. Exhibit C – Public access and utility easement identified under Instrument # \_\_\_\_\_.

4. Identification of Required Improvements. Developer shall install and complete, or cause to be installed and completed, the Required Improvements. As used herein, the term "Required Improvements" shall mean and refer to the following:

a. Dedication of the land area described in **Exhibit A** as public road right-of-way to the benefit of the City of Newport.

b. Installation of a 40-foot wide paved collector street with associated curb, sidewalk, and storm drainage improvements, as generally depicted on attached **Exhibit B**. Such improvements shall be constructed to standards established by the City Engineer.

c. Relocation of the six-inch public water line from the public access and utility easement, as described in **Exhibit C**, to the SE 1<sup>st</sup> Street right-of-way, as described in **Exhibit A**.

5. Release of Public Access and Utility Easement. City agrees to release the public access and utility easement described in **Exhibit C** at such time as the land described in **Exhibit A** is dedicated for public right-of-way purposes.

6. Construction of Required Improvements. If Developer does not obtain a certificate of occupancy within two years of the effective date of Ordinance No. 2044 then Developer shall install the Required Improvements and the plans and construction specifications related thereto shall be inspected and receive approval from the City Engineer no later than three years from the effective date of Ordinance No. 2044 (hereafter known as "Completion Date"). The City will accept public improvements only if they have been reviewed and accepted by the City Engineer.

7. Warranty of Improvements. Developer hereby warrants that the Required Improvements shall remain free from defects in materials or workmanship and that the Required Improvements continue to meet City standards for twelve (12) months following the Completion Date ("Warranty Period"). Upon completion and approval of any portion of the Required Improvements, Developer shall deposit funds with the City in the amount of twenty percent (20%) of the construction costs of such improvements to secure the warranty obligations under this section (Warranty Deposit) for City's use per Section 17.

8. License to Enter and Remain on Property. Developer hereby grants City and City's employees, engineers, consultants, agents, contractors, subcontractors and suppliers license to come onto and remain on the Real Property as necessary to make inspections of the Required Improvements. If City determines that any portion of the Required Improvements has not been completed by the Completion Date, City, its employees, engineers, consultants, agents, contractors, subcontractors and suppliers may enter onto and remain on the Real Property and install and complete the Required Improvements.

9. Right to Draw on Security. Upon failure of the Developer to complete the Required Improvements by the Completion Date, City may draw upon the security (as defined in Section 13) for any and all costs and expenses incurred by City, as determined by City, in the completion of the Required Improvements. For the purposes of this Agreement and access to any security offered and accepted to secure Developer's performance, Developer's failure to complete the Required Improvements shall include failure to install or have installed any portion of the Required Improvements to City specifications, approved plans or applicable building specialty codes as determined by the City Engineer in City Engineer's sole discretion.

10. License to Use Permits, Specifications and Plans. If City determines that any portion of the Required Improvements have not been satisfactorily completed as specified by the applicable Completion Date, Developer shall, upon request of the City, license to and provide City with all of Developer's applicable permits, plans and specifications and other documents necessary or useful in the completion of or related in any manner to the applicable Required Improvements.

11. No Third Party Beneficiaries. City and Developer are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or provides any benefit or right,

whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

12. Costs of Inspection. Developer shall pay to City all costs incurred by City in the inspection of the completed Required Improvements plus any fees, such as plan check fees and structural, electrical, plumbing and other specialty codes inspection fees normally associated with the review and inspection of any improvements on the Real Property.

13. Security for Required Improvements. The Developer's security shall consist of a surety bond or irrevocable letter of credit deposited with the City's treasurer upon execution of this agreement in an amount equivalent to 130% of the estimated cost of the Required Improvements as set forth in an Engineer's Cost estimate that is prepared by Developer and reviewed and approved by the City Engineer.

14. Developer's Obligation For Costs. Developer expressly acknowledges, understands, and agrees that this Agreement shall not relieve Developer from the obligation to complete and fully pay for the Required Improvements and other costs and fees set forth in this Agreement. Should Developer fail to perform its responsibilities under this Agreement in any manner, Developer agrees to compensate City for all costs related to Developer's failure to perform its obligation to complete and warrant the Required Improvements and pay costs and fees.

15. Release of Security or Obligation. After the Required Improvements have been inspected and approved by the City Engineer, the City shall release the Developer's security, provided Developer has procured the warranty security required pursuant to Section 7 of this Agreement. City may make partial releases of any security when appropriate.

16. Shortfall in Security. If the amount available to be drawn from Developer's security is less than the costs and expenses anticipated to be incurred, or actually incurred, by City, City may apply the proceeds of the security to the anticipated or actual costs and expenses of completion of the Required Improvements and then hold Developer responsible and liable for the difference between the anticipated or actual costs and expenses of completion and the amount of the remaining security.

17. Substandard Improvements. Should the Required Improvements prove to be substandard or defective within the twelve (12) month Warranty Period established in Section 7 of this Agreement, City shall notify Developer in writing of such substandard or defective Required Improvements. Developer shall then have sixty (60) days to complete repair or replacement of the Required Improvements; provided, however, in the event that such repair or replacement cannot reasonably be completed within sixty days, then the same shall be extended by such period of time as is reasonably necessary so long as Developer promptly commences and thereafter diligently prosecutes such repair or replacement. All deficiencies in construction and maintenance discovered and brought to the attention of Developer during the warranty period must be corrected to the satisfaction of the City Engineer. Should Developer fail to complete repair or replacement of the Required Improvements within the required time period, City may draw upon the Warranty Deposit to remedy the defects. Any and all costs incurred by City not covered by the Warranty Deposit shall be paid by Developer to City.

18. Expiration. This Agreement shall expire, and Developer's obligation to construct the Required Improvements shall be void, at such time as Developer obtains a certificate of occupancy for the Walgreens building. Otherwise, this Agreement expires twelve (12) months from the Completion Date unless City takes action under Section 17, which shall extend the term of this Agreement by [24 months].

19. No Agency. It is agreed by and between the parties that Developer is not carrying out a function on behalf of City, and City does not have the right of direction or control of the manner in which Developer completes performance under this Agreement nor does City have a right to exercise any control over the activities of the Developer.

20. Liens. Developer shall pay as due all claims for work done on and for services rendered or material furnished to the Real Property and shall keep the Real Property free from liens.

21. Waivers. No covenant, term or condition of this Agreement shall be deemed to have been waived by any Party, unless such waiver is in writing signed by the Party charged with such waiver. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

22. Entire Agreement/Modifications. This Agreement constitutes the entire agreement between and among the Parties with respect to the subject matter herein contained and all prior negotiations, discussions, writings and agreements between the Parties with respect to the subject matter herein contained are superseded and of no further force and effect. This Agreement cannot be amended or modified without a writing signed by all of the Parties hereto.

23. Severability. The unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

24. Oregon Law; Attorneys' Fees. This Agreement shall be interpreted, construed and enforced in accordance with the law of the State of Oregon. If any suit, action or proceeding (including under the U.S. Bankruptcy Code) is brought to declare, interpret, or enforce any rights under this Agreement, or for the breach of any warranty, representation, covenant, term or condition hereof, the prevailing party in such suit, action or proceeding, including at arbitration, at trial, on appeal to an appellate court arising therefrom, or on any petition for review, shall be entitled to recover reasonable attorneys' fees in addition to costs and disbursements. Further, if it becomes necessary for the City to contract for the services of an attorney to enforce any provision of this Agreement without initiating litigation, Developer agrees to pay City's attorney fees so incurred.

25. Covenants Running with the Land. It is the intention of the parties that the obligations set forth in this Agreement are also covenants necessary for the development of Property and as such shall run with the Property and shall be binding upon the heirs, executors, assigns, administrators, and successors of the parties hereto, and shall be construed to be a benefit and burden upon the Property. Developer shall therefore record this document in the Deeds and Records of Lane County, Oregon, to serve as notice to any future owners or occupants of the Real Property of the terms and conditions of this Agreement.

26. Further Assurances. Each party shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the parties hereto.

27. Indemnification. Developer shall be responsible for any and all injury to any and all persons or property caused directly or indirectly by reason of any and all activities of Developer under this Agreement and the failure of developer to comply with this Agreement; and further agrees to defend, indemnify and save harmless City, its officers, agents and employees from and against all claims, suits, actions, damages, costs, losses and expenses in any manner resulting from, arising out of, or connected with any such injury or noncompliance. Notwithstanding the foregoing, Developer shall have no liability for, and no obligation to indemnify the City for, any liability, loss, injury or damage to the extent the same arises out of the actions or inactions of the City.

28. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one Agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

29. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing to Developer or City at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid. Communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine

generates receipt of the transmission. To be effective against City, such facsimile transmission shall be confirmed by telephone notice to City Recorder. Any communication or notice mailed shall be deemed delivered three (3) days after mailing. Any notice under this Agreement shall be mailed by first class postage or delivered as follows:

To Developer:

To City:

City of Newport  
Attn: Community Development Director  
169 SW Coast Highway  
Newport, Oregon 97365  
Fax No. 541-574-0644

30. Captions. The captions contained in this Agreement were inserted for the convenience of reference only. Captions do not, in any manner, define, limit, or describe the provisions of this Agreement or the intentions of the parties.

Executed as of this \_\_\_ day of \_\_\_\_\_ 2012.

City:

CITY OF NEWPORT

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Developer:

\_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Attorney

**Exhibit A**

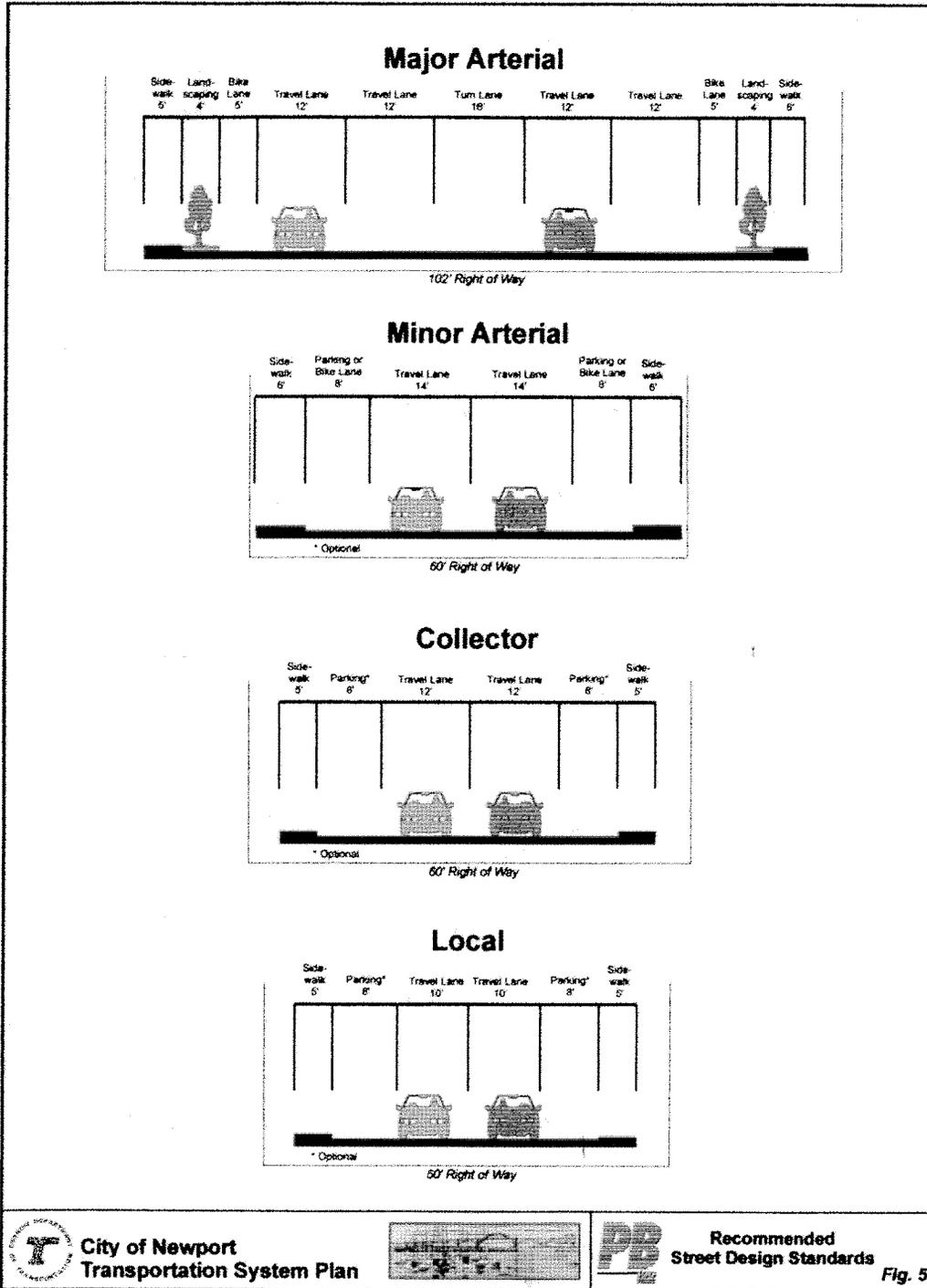
*Legal description of the vacated SE 1<sup>st</sup> Street right-of way*

A portion of the Southeast 1<sup>st</sup> Street right-of-way lying between South Cape Street and Southeast Avery Street in the Fredricksburg subdivision located in the NW ¼ of the NE ¼ of Section 8, Township 11 South, Range 11 West of the Willamette Meridian, in Lincoln County, Oregon, more particularly described as follows:

Beginning at the Southwest corner of Block 14 of the aforementioned subdivision, which is on the East right-of-way line of South Cape Street and the North right-of-way line of Southeast 1<sup>st</sup> Street; Thence East 180 feet along the South line of Block 14 to the Southeast corner of Block 14, said Southeast corner being the intersection of said South line of Block 14 and the West right-of-way line of Southeast Avery Street; Thence South 60 feet along the South extension of said West right-of-way line of Southeast Avery Street to the Northeast corner of Block 13 of said subdivision; Thence West 180 feet along the North line of Block 13 to the Northwest corner of Block 13, said Northwest corner being the intersection of said North line of Block 13 and the East right-of-way line of South Cape Street; Thence North 60 feet along the North extension of said East right-of-way line of South Cape Street to the Point of Beginning, containing an area of 10,800 square feet, more or less.

**Exhibit B**

*Recommended Street Design Standards*



## **Exhibit C**

### *Placeholder for recorded Public Access and Utility Easement*

## **EXHIBIT "B"**

Ordinance #2044  
Partial vacation of 1st Street  
(File #2-SV-11)

**After recording return to:**  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365

### **CITY OF NEWPORT, OREGON PUBLIC ACCESS AND UTILITY EASEMENT**

\_\_\_\_\_, hereinafter referred to as "Grantor", owns the real property described below and does hereby give and grant unto the City of Newport, an Oregon Municipal Corporation of Lincoln County, Oregon, hereinafter referred to as "Grantee", a non-exclusive, perpetual easement for public access and public utilities, including the right to lay, construct, and maintain any water mains and storm drainage lines, and all related appurtenances, hereinafter referred to as "Public Utilities", to be constructed and located on, across, under or over the surface of the following described real property:

An access and utility easement located in the Fredricksburg subdivision located in the City of Newport, Lincoln County in Township 11 South Range 11 West, Section 8 of the Willamette Meridian, described as follows:

Beginning at the Northwest corner of Block 13 of the aforementioned subdivision; Thence S2° 45' 53"W 6.80 feet, to the true point of beginning;

Thence S2° 45' 53"W 95.32 feet along the East right-of-way line of Southeast Cape Street; Thence N44° 48' 52"E 28.06 feet; Thence N20° 51' 01"E 36.91 feet; Thence N72° 45' 18"E 51.01 feet; Thence S87° 01' 47"E 103.03 feet, to the West right-of-way line of Southeast Avery Street; Thence N2° 58' 13"E 44.00 feet, along the West right-of-way line of Southeast Avery Street and its north extension; Thence N87° 01' 47"W 124.18 feet; Thence 13.45 feet along a non-tangential curve to the right with a radius of 10.00 feet, the long chord of which bears S88° 52' 27"W 12.46 feet; Thence S74° 45' 18"W 32.16 feet; Thence 19.31 feet along a non-tangential curve to the right with a radius of 16 .00 feet, the long chord of which bears S54° 05' 11"W 18.16 feet, to the true point of beginning; containing an area of 9,515 square feet, more or less. Bearings and distances are based on the right-of-way network established in CS 16076, recorded in Lincoln County Survey Records.

Grantor does covenant and agree that the easement area described herein may be utilized by Grantee, its agents and employees, and the general public for unrestricted ingress and egress to Grantor's property for the purpose of accessing said property or other real property in the area.

Grantee and its contractors, subcontractors, agents or employees shall have the right to enter and occupy the easement for the purpose of constructing, operating and maintaining the Public Utilities, including inspection, repair, replacement, removal or renovation of the Public Utilities.

Grantor shall be responsible for constructing a paved road surface, curbs, sidewalk, striping, signage and landscaping within the easement area as approved by Grantee. Grantor further agrees to maintain the easement area in a manner that does not impede vehicle and pedestrian movement, including prohibiting vehicles from parking therein. Balm, poplar, locust, cottonwood or willow trees should not be planted near the easement. It is understood that Grantee may remove any physical obstructions including buildings, fences, trees, or shrubbery, and abate any use of the easement if Grantee finds that the physical obstruction or use will interfere with the Public Utilities or Grantee's easement rights granted above, without recompense to the Grantor.

Grantor and Grantee intend that this easement bind Grantor, his or her heirs, successors and assigns. This easement will not be considered abandoned until Grantee has declared the easement abandoned and no longer in use by City, and releases this easement in a duly executed and recorded Release of Easement.

In addition to all other remedies allowed by law, Grantee, its successors and assigns, shall have the right to seek injunctive relief for the enforcement of the terms and conditions of this easement against Grantor. If either party brings suit or action to enforce the terms of this easement, the prevailing party shall be entitled to recover such sums as the court may adjudge reasonable as attorney fees and costs in such suit or action, or upon appeal.

The true and actual consideration for this easement is \$ \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Owner

STATE OF OREGON )  
County of Lincoln ) ss

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012 the above named \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon

**ACCEPTANCE OF EASEMENT**

The City of Newport, Oregon, does hereby accept the above-described Public Utility Easement this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mark McConnell, Mayor

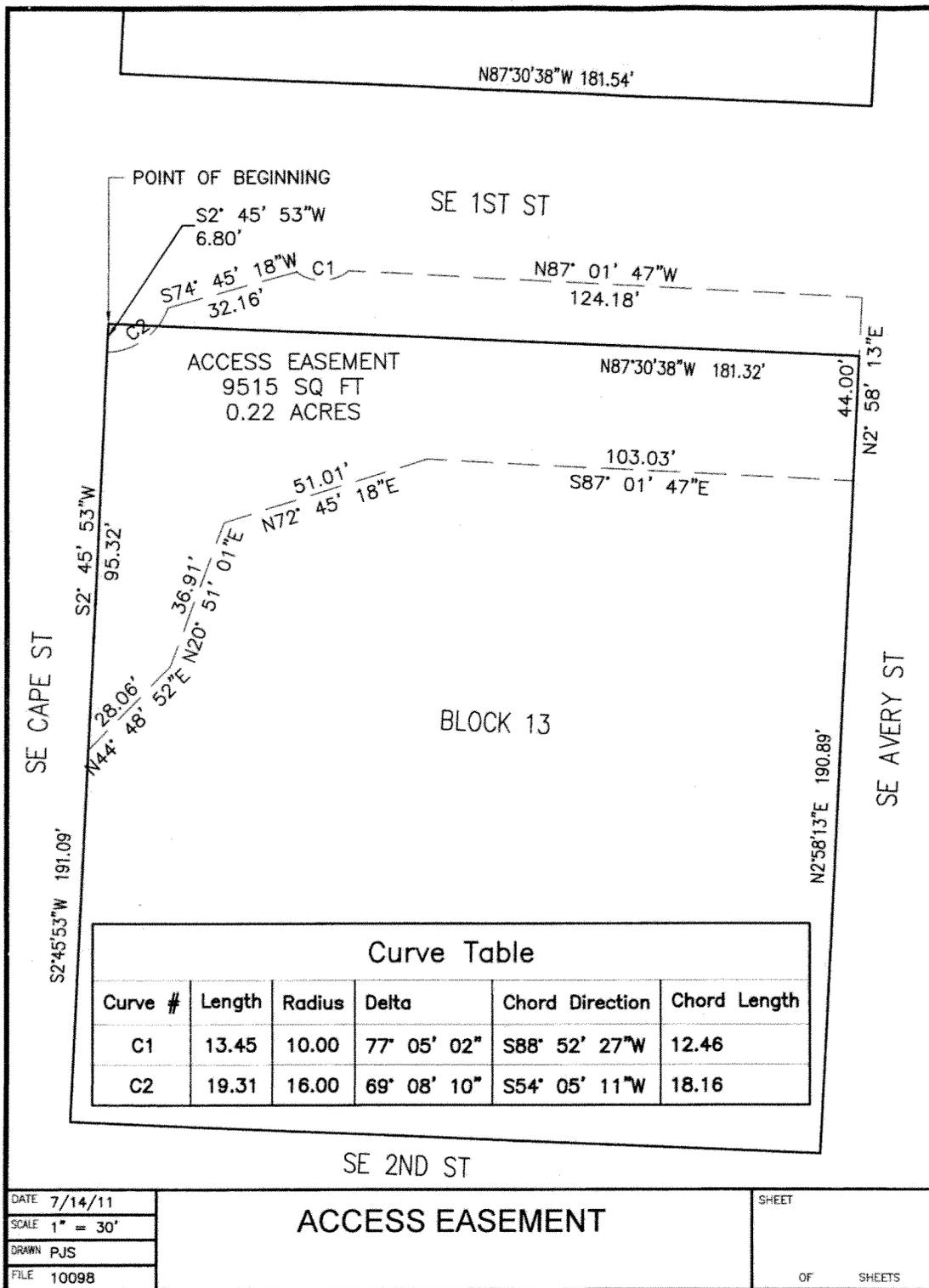
STATE OF OREGON )

) ss:

County of Lane )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2012 by Mark McConnell as Mayor of the City of Newport.

\_\_\_\_\_  
Notary Public for Oregon



DATE 7/14/11  
 SCALE 1" = 30'  
 DRAWN PJS  
 FILE 10098

ACCESS EASEMENT

SHEET  
 OF SHEETS