

## **ORDINANCE NO. 838**

### **AN ORDINANCE OF THE CITY OF WILSONVILLE DECLARING AND AUTHORIZING THE VACATION OF AN APPROXIMATELY 2,075 SQUARE FOOT STUB OF SW CHERBOURG LANE PUBLIC STREET RIGHT-OF-WAY NORTH OF SW BERLIN AVENUE IN VILLEBOIS LEGALLY DESCRIBED IN ATTACHMENT 3.**

WHEREAS, the right-of-way dedications for the Tonquin Woods at Villebois No. 6 subdivision in 2014 included a street stub for the future extension of SW Cherbourg Lane north of SW Berlin Avenue; and

WHEREAS, consistent with the amended Villebois Specific Area Plan North and Preliminary Development Plan 5 North, the once contemplated street is no longer planned to be extended; and

WHEREAS, the Development Review Board and City Council have approved development of portions of single-family home lots, a portion of a pedestrian pathway, and a portion of a private alley over the subject property; and

WHEREAS, Condition of Approval PFC 6 of the approval of the Preliminary Development Plan for Villebois Phase 5 North, City Case File DB18-0051, requires the Applicant for the Preliminary Development Plan to “work with the City to abandon or transfer ownership of the existing right-of-way”; and

WHEREAS, such Condition of Approval was adopted by the Development Review Board upon recommendation of the City’s Engineering Division and was subsequently accepted by the Applicant for the Preliminary Development Plan; and

WHEREAS, Victor and Allen Chang and Polygon at Villebois III LLC were the Applicant for Preliminary Development Plan; and

WHEREAS, consistent with the Condition of Approval, Victor and Allen Chang and Polygon at Villebois III LLC have filed Street Vacation Petitions, attached hereto as Attachment 2, with the City of Wilsonville requesting vacation proceedings be initiated for the approximately 2,075 square foot stub of SW Cherbourg Lane north of SW Berlin Avenue, as authorized by ORS 271.080-271.170; being owners of all land adjacent to the subject right-of-way; 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 1, Street Vacation Findings, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the vacation is conditioned on those taking title to the vacated land, concurrently with the land transfer, providing easements, private or public as appropriate, for all existing utilities including public pipelines; 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 August 26, 2019, affording the public an opportunity to comment on the proposed tracts for street vacation, and then passed Resolution No. 363, Attachment 4, recommending approval of the street vacation to the City Council; and

WHEREAS, on September 16, 2019, 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 1, 2, and 3; 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 that a street is no longer planned at the location consistent with the approved modified Villebois Specific Area Plan North and Preliminary Development Plan for Villebois Phase 5 North.

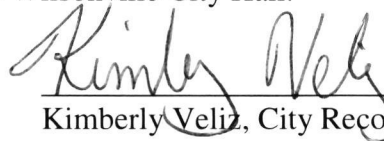
**NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:**

1. The City Council adopts, as its findings, determinations, and conclusions, the above Recitals and incorporates them by reference as if fully set forth herein.
2. The City hereby declares vacated an approximately 2,075 square foot stub of SW Cherbourg Lane north of SW Berlin Avenue, as more fully described in Attachment 3, situated in the northeast quarter of Section 15, Township 3 South, Range 1 West of the Willamette Meridian, City of Wilsonville, Clackamas County, Oregon, subject to those taking title to the vacated land, concurrently with the land transfer, providing

easements, private or public as appropriate, for all existing utilities including public pipelines.

3. 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 16<sup>th</sup> day of September 2019, and scheduled for second reading on the 7<sup>th</sup> day of October 2019, commencing at the hour of 7:00 p.m. at the Wilsonville City Hall.

  
\_\_\_\_\_  
Kimberly Veliz, City Recorder

ENACTED by the City Council on the 7<sup>th</sup> day of October 2019 by the following votes:

Yes: 5 No: 0

  
\_\_\_\_\_  
Kimberly Veliz, City Recorder

DATED and signed by the Mayor this 7<sup>th</sup> day of October 2019.

  
\_\_\_\_\_  
TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

ATTACHMENTS:

1. Street Vacation Findings
2. Street Vacation Petitions
3. Legal Description of Area to be Vacated
4. Development Review Board Resolution No. 363

Ordinance No. 838 Attachment 1  
Street Vacation Findings

Vacation of SW Cherbourg Lane North of SW Berlin Avenue

City Council

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**Hearing Date:** September 16, 2019  
**Date of Report:** August 30, 2019

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**DRB Application No.:** DB19-0006 Street Vacation

**Request/Summary** The requests before the Development Review Board include a vacation (abandon and transfer ownership to adjacent properties) of a street stub of SW Cherbourg Lane north of SW Berlin Avenue. The total area proposed for vacation is 2,075 Square Feet. The vacation reflects the fact the City no longer plans an extension of SW Cherbourg Lane through this block.

**Location:** SW Cherbourg Lane right-of-way north of SW Berlin Avenue, Section 15AB, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

**Petitioners:** Victor C. Chang, Allen Y. Chang, Polygon at Villebois III LLC

**Applicant's Rep.:** Pacific Community Design, Inc.

**Comprehensive Plan Map Designation:** Residential-Village

**Zone Map Classification:** V (Village)

**Staff Reviewers:** Daniel Pauly AICP, Planning Manager  
Dominique Huffman PE, Civil Engineer  
M. Patty Nelson PE, City Engineer

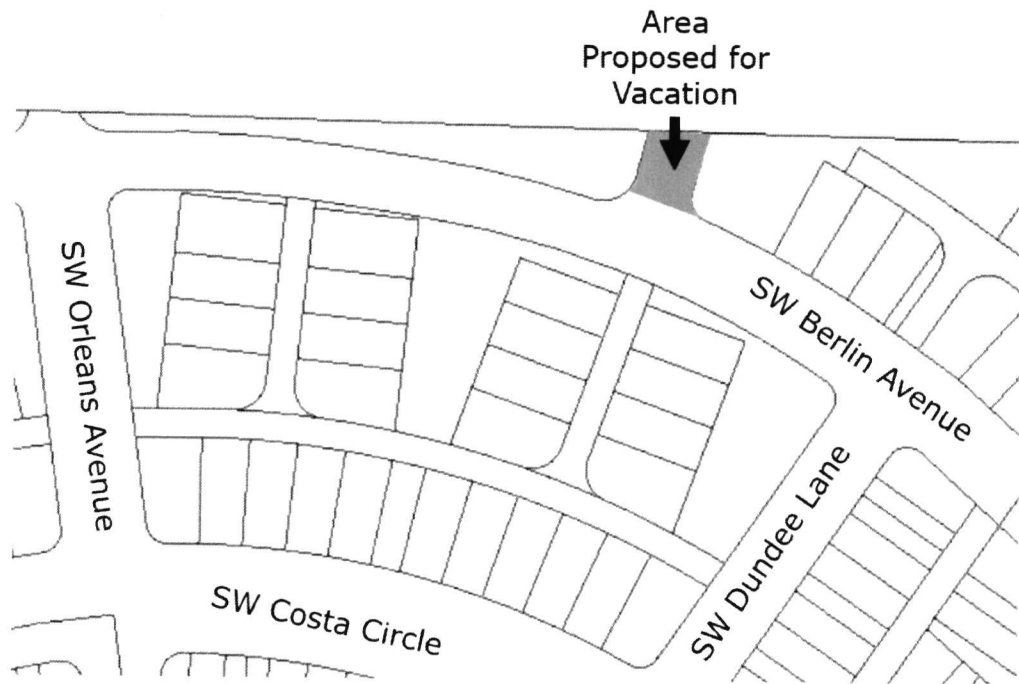
**Staff Recommendations:** Adopt of the requested right-of-way vacation with Conditions.

**Applicable Review Criteria**

Development Code	
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 City Planning Documents</b>	
Villebois Village Master Plan	
Transportation Systems Plan	
SAP North Approval Documents	
PDP 5 North 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

**Vicinity Map**



**Findings of Fact:**

1. Surrounding land uses are as follows:

Compass Direction	Zone:	Existing Use:
North:	Clackamas County EFU	Agriculture
East:	V	Residential
South:	V	Residential
West:	V	Residential

2. 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)
- LP10-0001 – Amendment to Villebois Village Master Plan (School Relocation from SAP North to SAP East)
- LP13-0005 – Amendment to Villebois Village Master Plan (Future Study Area)

Quasi Judicial:

- DB07-0054 et seq – SAP-North
- DB07-0087 et seq – PDP-1N, Arbor at Villebois
- DB11-0024 et seq – PDP-1N Modification, SAP North Amendment Polygon NW
- DB12-0066 et seq – PDP-1N Modification, SAP North Amendment Polygon NW
- DB13-0020 et seq – PDP-2N, SAP North Amendment Polygon NW
- DB14-0009 et seq – PDP-3N, SAP North Amendment Polygon NW
- DB15-0084 et seq – PDP 4N, SAP North Amendment Polygon NW
- DB18-0049 et seq – PDP 5N, SAP North Amendment Polygon NW
- AR19-0004 – Minor Modifications to Park Area, Number of Lots, and Pedestrian Connection

3. 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.

### Request Street Vacation

As described in the Findings below, the request meets the applicable criteria or will by Condition of Approval.

## Planning and Land Development Ordinance

### Authority to Review Street Vacations

Subsections 4.031 (.01) L., 4.032 (.01) D., Subsection 4.033 (.01) H.

1. The City previously approved specific development applications for the land being vacated subject to approval of the street vacation. The approved plans show the vacated land developed as a portion of a mid-block pedestrian crossing, a portion of an alley, and portions of two residential lots. See case files DB18-0049 et. seq. and AR19-0004. 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.

### Street Vacation Reviewed In Accordance with ORS 271.

Subsection 4.034 (.07)

2. As shown in Findings 4-7 below, the City's review of the street vacation request is in accordance with ORS 271.

## Previous Land Use Approvals

### Condition of Approval to Vacate

DB18-0051 SAP-East PDP 5N, Preliminary Development Plan, Condition of Approval PFC 6.

3. The Condition of Approval requires, "with previous development a stub of Cherbourg Lane was constructed off the north side of Berlin Avenue. Applicant shall submit the required exhibits and work with the City to abandon or transfer ownership of the existing right-of-way, demolish the roadway and reconstruct the north edge of Berlin Avenue with curb and gutter, sidewalk, landscape and irrigation." The proposed street vacation enables this Condition of Approval to be met.

## Oregon Revised Statutes

Petition for Street Vacation/Proposed Use of Vacated Ground/Public Hearings  
ORS 271.080 (1), ORS 271.090, ORS 271.100, ORS 271.110, ORS 271.120

4. Polygon Homes and Victor and Allen Chang filed the described petition. Petitioners are receiving notice of the public hearings for the requested vacation along with all other required notices for the public hearings. The previous land use approvals for the Clermont subdivision establish the subject area will be incorporated into portions a mid-block pedestrian connection, portion of an alley, and portions of two residential lots.

Consent of All Adjoining Properties and 2/3 of Affected Properties  
ORS 271.080 (2)

5. 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 225,963 SF. The sum of the area of real property affected thereby that is also within the abutting tax lots is 200,690 SF, or 90% 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 90% (i.e. greater than two-thirds) of the area of the real property affected has been provided on the attached petition.

Title to Vacated Area  
ORS 271.140

6. The title to the vacated area will be attached to the bordering properties consistent with state statute.

Vacation Records to be Filed  
ORS 271.150

7. The ordinance approving the street vacation will be duly recorded in the records of Clackamas County, the cost of which will be borne by the petitioners.



## Street Vacation Petition

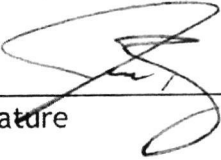
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This petition must be signed by all abutting property owners, and the owners of not less than 2/3 of the area of the real property "affected thereby", as defined in ORS 271.080 (2) and as shown on the attached Street Vacation Map, attached hereto as **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**.

### REQUIRED SIGNATURES:

We, the owner in fee simple of the following described real properties consent to the vacation of all of SW Cherbourg Lane ROW, North of Berlin 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**.

) Polygon at Villebois III, LLC.  
 \_\_\_\_\_  
 Property Owner's Name

  
 \_\_\_\_\_  
 Signature **Jason Baker**

Taxlot(s) 31W15AB00543 & 8130  
 \_\_\_\_\_  
 Property Street Address and Legal Description

3/4/19  
 \_\_\_\_\_  
 Date

## 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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) Allen Chang  
Property Owner's Name

  
Signature

Victor Chang  
Property Owner's Name

\_\_\_\_\_  
Signature

28201 SW 110th Avenue, Wilsonville, OR 97070 (TL 31W15AB07400 & 7600)  
Property Street Address and Legal Description

\_\_\_\_\_  
Date

### 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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) Allen Chang  
Property Owner's Name

\_\_\_\_\_  
Signature

Victor Chang  
Property Owner's Name

*Victor C. Chang*  
Signature

28201 SW 110th Avenue, Wilsonville, OR 97070 (TL 31W15AB07400 & 7600)  
Property Street Address and Legal Description

2/26/2019  
Date

## EXHIBIT A



**LEGAL DESCRIPTION**  
 Right-of-Way Vacation  
 Map 3S1W15

A tract of land being SW Cherbourg Lane 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:

BEGINNING at the Northeast corner of Tract "FFF", plat of "Tonquin Woods At Villebois No. 6";

thence along the northerly plat boundary line of said plat, South 88° 34' 09" East, a distance of 41.67 feet to the Northwest corner of Tract "GGG" of said plat;

thence along the westerly line of said Tract "GGG", South 15° 00' 55" West, a distance of 44.62 feet to a point of tangential curvature;

thence continuing along said westerly line, along a 15.00 foot radius tangential curve to the left, arc length of 21.19 feet, central angle of 80° 57' 09", chord distance of 19.47 feet, and chord bearing of South 25° 27' 39" East to a point on the northerly Right-of-Way line of SW Berlin Avenue;

thence along a 727.50 foot radius curve, being parallel with and 27.50 feet northerly from the centerline of SW Berlin Avenue, with a radius point bearing South 24° 03' 46" West, arc length of 52.56 feet, central angle of 04° 08' 23", chord distance of 52.55 feet, and chord bearing of North 68° 00' 25" West;

thence continuing along said parallel line, North 70° 13' 10" West, a distance of 3.62 feet to a point on the easterly line of said Tract "FFF";

thence along said easterly line, along a 24.00 foot radius non-tangential curve, concave northwesterly, with a radius point bearing North 47° 54' 33" West, arc length of 11.34 feet, central angle of 27° 04' 31", chord distance of 11.24 feet, and chord bearing of North 28° 33' 11" East to a point of tangency;

thence continuing along said easterly line, North 15° 00' 55" East, a distance of 32.04 feet to the POINT OF BEGINNING.

Containing 2,075 square feet, more or less.

Property Vested in:

Polygon at Villebois III, L.L.C.

Map 3S1W15

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

OREGON  
 JULY 9, 2002  
 TRAVIS C. JANSEN  
 57751

RENEWS: 6/30/2019

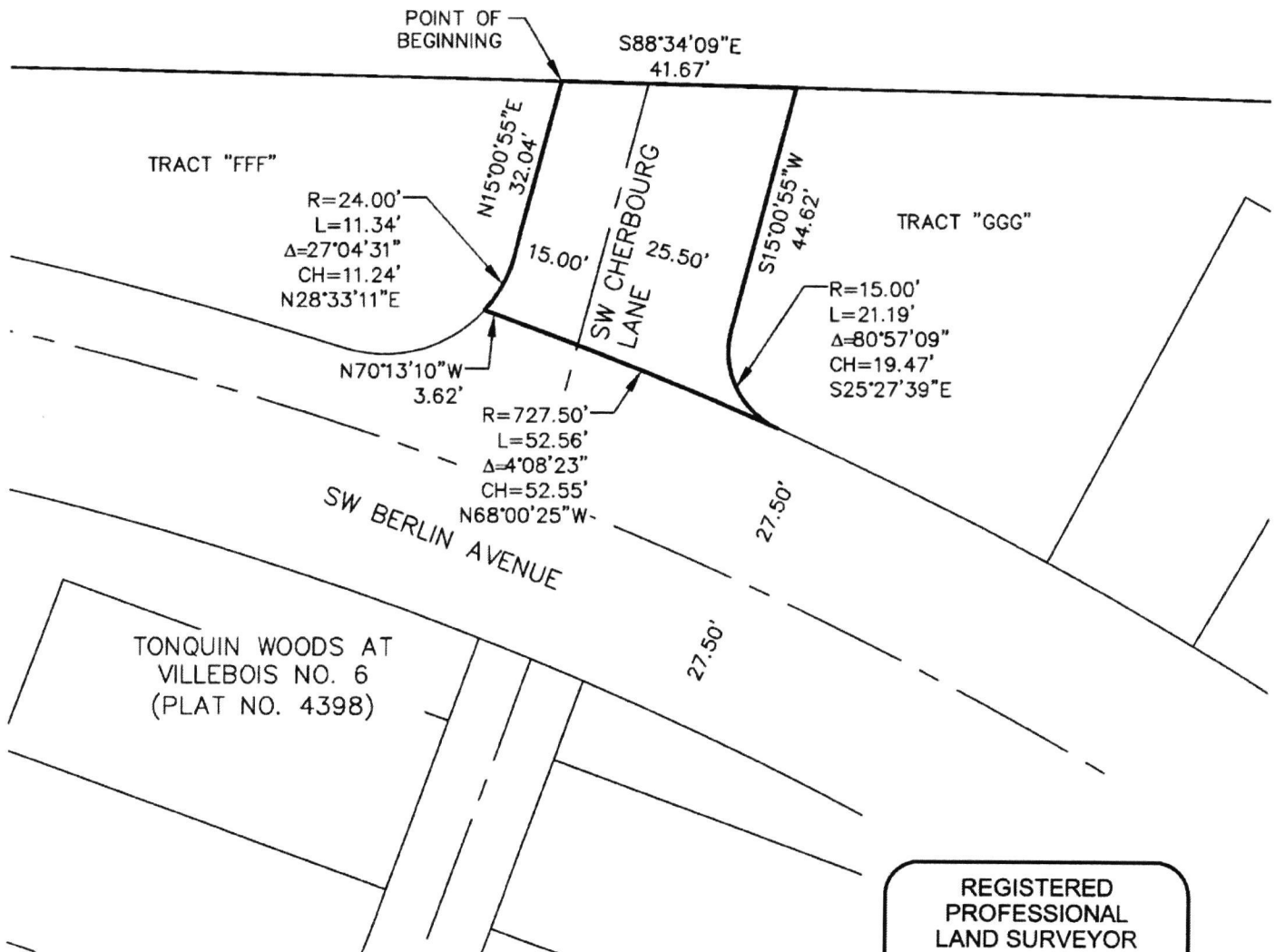


# EXHIBIT B

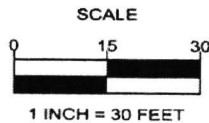


## SKETCH TO ACCOMPANY LEGAL DESCRIPTION RIGHT-OF-WAY VACATION MAP 351W15

DOCUMENT NO.  
91-08203



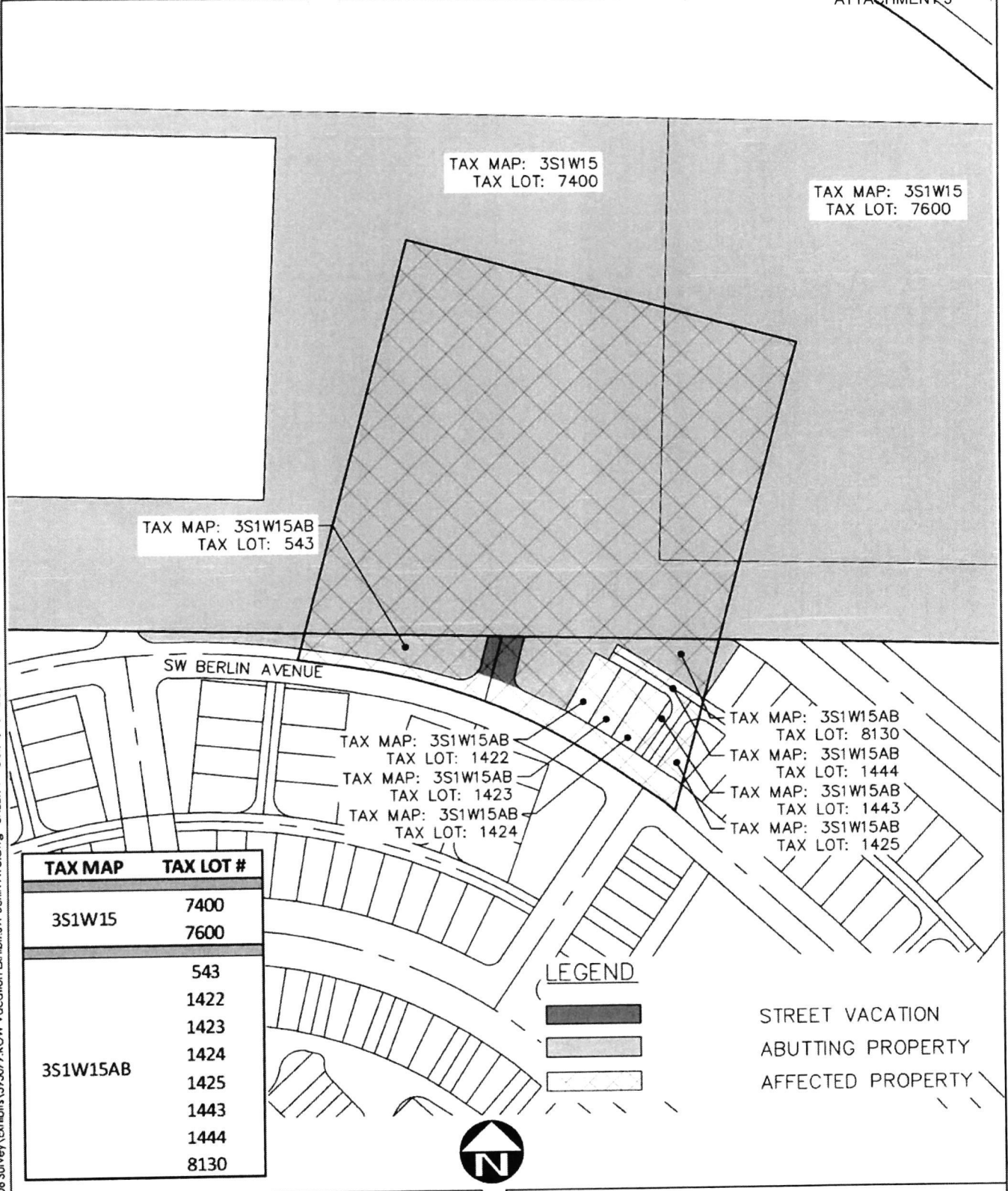
Property Vested in:  
POLYGON AT VILLEBOIS III, L.L.C.  
MAP 351W15



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*[Signature]*  
OREGON  
JULY 9, 2002  
TRAVIS C. JANSEN  
57751

RENEWS: 6/30/2019



TAX MAP: 3S1W15  
TAX LOT: 7400

TAX MAP: 3S1W15  
TAX LOT: 7600

TAX MAP: 3S1W15AB  
TAX LOT: 543

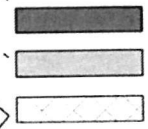
SW BERLIN AVENUE

TAX MAP: 3S1W15AB  
TAX LOT: 1422  
TAX MAP: 3S1W15AB  
TAX LOT: 1423  
TAX MAP: 3S1W15AB  
TAX LOT: 1424

TAX MAP: 3S1W15AB  
TAX LOT: 8130  
TAX MAP: 3S1W15AB  
TAX LOT: 1444  
TAX MAP: 3S1W15AB  
TAX LOT: 1443  
TAX MAP: 3S1W15AB  
TAX LOT: 1425

TAX MAP	TAX LOT #
3S1W15	7400
	7600
3S1W15AB	543
	1422
	1423
	1424
	1425
	1443
	1444
	8130

LEGEND



STREET VACATION  
ABUTTING PROPERTY  
AFFECTED PROPERTY



N:\proj\395-079\09 Drawings\06 Survey\Exhibits\395079 ROW Vocation Exhibit SW Berlin Ave.dwg - SHEET: 1 Oct. 4, 18 - 2:06 PM laiemah

DRAWN BY: FAA DATE: 10/04/18  
 REVIEWED BY: TCJ DATE: 10/04/18  
 PROJECT NO.: 395-079  
 SCALE: 1"=200'  
 PAGE 1 OF 1



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

**DEVELOPMENT REVIEW BOARD  
RESOLUTION NO. 363**

**A RESOLUTION ADOPTING FINDINGS RECOMMENDING APPROVAL OF A REQUEST FOR THE CITY TO VACATE SW CHERBOURG LANE RIGHT-OF-WAY NORTH OF SW BERLIN AVENUE, SECTION 15AB, TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CITY OF WILSONVILLE, CLACKAMAS COUNTY, OREGON. POLYGON AT VILLEBOIS III LLC AND ALLEN AND VICTOR CHANG – PETITIONERS.**

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 the staff report on the above-captioned subject dated August 19, 2019, and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel A at a scheduled meeting conducted on August 26, 2019, at which time exhibits, together with findings and public testimony were entered into the public record, and

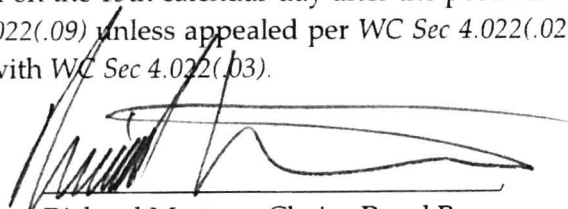
WHEREAS, the Development Review Board considered the subject and the recommendations contained in the staff report, and

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 August 19, 2019, attached hereto as Exhibit A1, with findings and recommendations contained therein, and authorizes the Planning Director to issue permits consistent with said recommendations for:

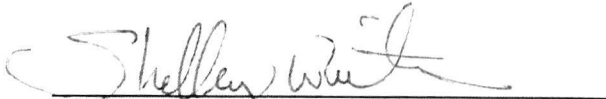
DB19-0006: Street Vacation

ADOPTED by the Development Review Board of the City of Wilsonville at a regular meeting thereof this 26<sup>th</sup> day of August, 2019 and filed with the Planning Administrative Assistant on Aug 27, 2019. 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).



Richard Martens, Chair - Panel B  
Wilsonville Development Review Board

Attest:



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**Shelley White, Planning Administrative Assistant**