



**File No: VA 23-02 Street Right-Of-Way Vacation- unbuilt portions of NE Lauren Ave. and NE Mary Kay Ave.**

**Proposal:** A petition has been filed requesting the vacation of an unbuilt section of NE Lauren Ave. at the western terminus of the existing street. The City is expanding the request to include unbuilt sections of NE Mary Kay Ave., as well. If approved, the vacation will eliminate an existing deed covenant that was required by a condition of approval for a partition.

**I. BACKGROUND**

- A. Petitioner: Lisa Lambrecht (for NE Lauren Ave.).
- B. Location: See attached vicinity map. Near the western terminus of NE Lauren Ave. and on portions of the vacant lot with the address 3255 Mary Kay Ave., 10S-03W-16CC-00101. At the time this was published, the area for NE Lauren Ave. included portions of the following tax lots: 10S-03W-16CC-00800, 10S-03W-16CC-00101, and 10S-03W-16CC-00102.
- C. Review Type: The proposal is a street vacation. The Millersburg Development Code is silent on street vacations, therefore the State requirements for vacations guided this action. Street vacations are regulated by Oregon Revised Statutes (ORS) 271.080 through 230. This section specifies that a hearing before the City Council is required for both private vacation requests and public vacations (this staff report addresses both below). This is considered a legislative action. Any appeal of the City Council's decision relating to this matter should be made to the circuit court (ORS 271.130(4)).
- D. Public Notice and Hearing: The noticing requirements differ between private requests for street vacations and public street vacations. All notices for each of the two proposed vacations used all three notice methods, even though not all three were required for each type. This will result in an over notification but avoids any complication between which types of vacations required which types of notices. Pursuant to ORS 271.110 a notice was posted twice in the Democrat Herald, notices were sent to surrounding property owners on October 18, 2023, and signs were posted in 3 locations near the site of the vacations on October 18, 2023. Information related to the hearing is posted on the City's website here <https://www.cityofmillersburg.org/planning/page/va-23-02-lisa-lambrecht-vacation>
- E. Review Criteria: Street vacations are regulated by Oregon Revised Statutes (ORS) 271.080 through 230. There are no criteria for the proposed Land Use

action, only laws. These regulations are used in place of criteria because the City has no criteria for street vacations.

F. Current Zoning: Residential Low (RL)

G. Proposed Zoning: N/A

H. Background: In 2013 the City of Millersburg approved a partition for Lisa Lambrecht (at the time her last name was Holifield) that created 3 parcels, two of which were located near the end of NE Lauren Ave. At the time, NE Lauren Ave. came to a dead end at the property line of the partition. The street was intended to continue west to serve future development west of the Morningstar Subdivision (located adjacent to the petitioner's property on the east) and further to the west of Ms. Lambrecht's partition. Actual dedication of the street right-of-way was not required by the City at the time Ms. Lambrecht's partition was approved. The partition included an easement that assured no structures would be placed in the area that could have been required for a possible future extension of NE Lauren Ave. A condition of approval on the partition required the applicant to enter into a covenant, prior to the map recording, that would allow the City to accept Right-Of-Way (ROW) for NE Lauren Ave should any development west of the partition require such (see attached Planning Commission minutes for July 9, 2013, condition of approval # 4). The rights afforded to the City in the covenant are equal to dedications of ROW, which is why a vacation is being used to eliminate the covenant.

Though the petition is just for the portion of the covenant that impacts the petitioner's property, the City is electing to expand the request and vacate all ROW specified in the covenant (see attached draft ordinance with covenant as an exhibit). The covenant includes requirements for two streets- NE Lauren Ave. and NE Mary Kay Ave. The covenant required the ROW for both streets to be provided to the City at the time such ROW was needed. The City has determined that the covenant is no longer required by the City for either street because:

- a) For NE Lauren Ave. the development west of the petitioner's property has already developed and did not need to use NE Lauren Ave. for access. It is not anticipated that the access from NE Lauren Ave. will be needed for any other properties west of the petitioner's property due to other constraints, including wetlands and flood plains. Additionally, the Morningstar Subdivision has two required points of emergency access and does not require NE Lauren Ave. to connect

to anything in order to comply with City access requirements.

- b) NE Mary Kay Ave. is different. The West Valley subdivision located to the west of the petitioner's property included a future connection for NE Mary Kay Ave. Likewise, the Morningstar Subdivision also included a stub connection for NE Mary Kay Ave. to continue west, someday. The City would like to see those eventually connect to each other. The covenant requires the ROW for NE Mary Kay Ave. to be provided to the City when required (similar to NE Lauren Ave.); however, the current Development Code also requires the streets to connect at the time the petitioner's property is further developed. There is no need or benefit for redundancy between the covenant and the requirements of the Code.

For these reasons, the petitioner's request for vacation of a portion of the covenant has been expanded to vacate the entire covenant.

## **II. REGULATIONS**

### **ORS 271.080-230**

The State requirements for street vacations are structured in two parts- private petitions to vacate, and public agency sponsored vacations. The private vacations are regulated by ORS 271.080 through 271.120. Public vacations are regulated by ORS 271.130, though the text of this section continually references the private vacations sections as well. Sections 271.140 through 271.170 apply to both public and private vacations. The remainder of the ORS section (271.180 through 230) apply only to port districts and are not applicable here. In this instance, part of the vacation is by private petition, part is public. See the background section above for more details. Therefore, part of the private vacation rules will apply, some of the public vacation rules will apply.

All applicable regulations are reviewed below.

### **ORS 271.080 Vacation in incorporated cities**

- (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.**

**ANALYSIS:** The description of the property is supposed to be included in Exhibit A of the attached covenant. However, no copy of Exhibit A could be located. Therefore, following description was used:

See attached vicinity map. Near the western terminus of NE Lauren Drive and on portions of the vacant lot with the address 3255 Mary Kay Ave., 10S-03W-16CC-00101. At the time this was published the area for NE Lauren Ave. included portions of the following tax lots: 10S-03W-16CC-00800, 10S-03W-16CC-00101, and 10S-03W-16CC-00102. This will include unbuilt sections of NE Lauren Ave. and NE Mary Kay Ave. Ultimately this vacation will serve to eliminate the existing covenant, including all requirements to dedicate NE Lauren Ave. and NE Mary Kay Ave., as they relate to property once owned by, or currently owned by, Ms. Lisa Lambrecht (including property now owned by Mr. and Ms. Bryan Rehnberg).

The intended use after the vacation will continue to be residential uses.

**FINDING:** Based on the analysis above, the project meets this regulation.

**(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.**

**ANALYSIS:** The proposal includes two vacations. One is public, one is private. These regulations only apply to the private petition, which pertains only to NE Lauren Ave. A map is attached that shows the properties required to sign the

petition. The applicant has provided signatures from two thirds of the properties, as required. The map provided by the petitioner shows 18 properties within the notice area of NE Lauren Ave. Two thirds of 18 properties would be 12 signatures. The petition includes 15 signatures. These signatures are attached. The contiguous neighbor to the south, Mr. Bryan Rehnberg, provided support via email.

**FINDING:** Based on the analysis above, the project meets this regulation.

### **ORS 271.090 Filing of petition**

**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. ORS 271.130.**

**ANALYSIS:** The petition was found to be sufficient, and the petitioner was notified of the hearing date.

**FINDING:** Based on the analysis above, the project meets this regulation.

### **ORS 271.110 Notice of hearing**

- (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.**
- (2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case**

may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.

- (3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor.

**ANALYSIS:** Three types of notices were prepared.

- 1) A notice was published in the Democrat Herold on two consecutive weeks. The content of the notice was consistent with the requirements stated.
- 2) Signs were created and posted at the ends of the existing NE Lauren Ave., NE Mary Kay Ave., and NE Stroll Ave. The content of the notice was consistent with the requirements stated.
- 3) Mailed notices were also sent to properties within both mapped areas, see attached exhibits. The content of the notice was consistent with the requirements stated.

**FINDING:** Based on the analysis above, the project meets this regulation.

### **ORS 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.**

**ANALYSIS:** The petitioner provided the appropriate number of signatures as required by ORS 271.080. All forms of notice, newspaper, signs and notice

mailed to the neighbors within the mapped areas, were provided consistent with ORS 271.110. Lastly, the ORS requires that the City Council find that the public interest will not be prejudiced by the vacation. In considering this, the following factors are relevant:

1. The areas proposed to be vacated are not needed for ROW presently, and they are not identified in any adopted plan, for public services, transportation functions, utility functions, or stormwater functions.
2. There are no existing utilities, street paving, sidewalks, or city-maintained stormwater facilities located within either of the areas proposed to be vacated.
3. The vacations do not prevent the extension of, or the retention of public services, transportation functions, utility functions, or stormwater functions. Specifically, should either street need to continue in the future, they will be addressed through the land division that would require them. The current version of the Land Use Development Code requires the dedication of streets needed to provide primary and secondary access. Should a future dedication of NE Lauren Ave. or NE Mary Kay Ave. be needed in order to facilitate future land division access, that need will be met as a requirement of the Development Code. The rights afforded by the covenant are therefore duplicative and no longer needed.
4. The property to the west and east of the petitioner's property is fully developed. Some property to the north of the petitioner's property would require access if divided, but that is currently available along NE Millersburg Drive and NE Jaunt Ave. and would not require the dedication offered in the covenant. Should the petitioner's property or the property to the north be further divided, public services, transportation functions, and utilities can be extended in an orderly and efficient manner without the need for the City to use the dedication rights afforded by the covenant.
5. The vacation does not impede the future best use, development of, or access to abutting property. As explained above, the property to the east and west is fully developed and will not require additional access using NE Lauren Ave. or NE Mary Kay Ave. The property to the north has two other access points and does not require NE Mary Kay Ave. for access.

6. The areas subject to the vacations are not presently needed as part of an interconnected system of public streets that would be generally consistent with neighboring street patterns. The West Valley Subdivision to the west includes Stroll Ave. that would connect to any future development of the petitioner's property. NE Mary Kay Ave. also connects to the petitioner's property. Utilities exist in both streets. Any further division of the petitioner's property should/could use both streets for access. Those two streets may connect internally on the petitioner's property, but they would not have to in order to be consistent with neighboring street patterns.

The two vacations are in the public's interest for the following reasons, first, no neighbors require the access that would be provided by either street. The internal future division of the petitioner's property need not be burdened by the rights afforded by the covenant. Second, access and utility connects are a requirement of any subdivision. Third, the covenant may actually limit the future design of any further division because alternative designs provided at the time of future development may better serve the public.

**FINDING:** Based on the analysis above, the project meets this regulation.

### **ORS 271.130 Vacation on City governing body's own motion**

- (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 (Vacation in incorporated cities) and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110 (Notice of hearing), but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080 (Vacation in incorporated cities), object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.**

**ANALYSIS:** This section specifically applies to NE Mary Kay Ave., because the petitioner did not specifically request this street vacation. As explained previously, the City has extended the vacation request in order to fully eliminate the existing covenant.



The City portion of the vacation was also noticed using the requirements of ORS 271.110 which requires posting in a newspaper, two consecutive weeks, it requires signs to be posted at the site of the vacation, and it requires notices to be mailed to surrounding property owners. The property owners were identified using the process outlined in ORS 271.080 (200' x 400' maps). Maps of these areas are attached to show conformance. Regarding the consent of the neighboring property owners, the City did not seek direct written consent because the vacations will not 'substantially affect the market value' of the properties. The regulations explain that if the property value is not affected, the requirement for their consent does not apply.

It should be noted that the value of the property will be unaffected by the proposed vacation. The ROW was not actually dedicated. The deed covenant essentially made an offer of dedication, which is sometimes called a 'springing interest.' The City never required the ROW to be dedicated, so no dedication ever occurred.

**FINDING:** Based on the analysis above, the project meets these regulations.

**(2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.**

**ANALYSIS:** The proposal includes two vacations. Consistent with this regulation. The two proposed street ROW vacations have been bundled into this one Land Use action.

**FINDING:** Based on the analysis above, the project meets this regulation.

**(3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.**

**ANALYSIS:** At the time this staff report was drafted the petitioner owed taxes on the property. These are the standard taxes due annually, there are no past due taxes due. The taxes are due by November 15, 2023, the day after the hearing.<sup>1</sup>

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<sup>1</sup> <https://gis.co.linn.or.us/portal/apps/webappviewer/>

It is assumed these will be paid in full by the time of the hearing, staff will check the day of the hearing to assure the taxes are paid. Just in case, however, the ordinance has been crafted in such a way that it only becomes effective 30 days after the issuance of a certificate showing that all city liens and all taxes have been paid.

**FINDING:** Based on the analysis above, the project meets this regulation.

- (4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases.**

**ANALYSIS:** This section simply explains the process for an appeal.

**FINDING:** This regulation is informational only.

#### **ORS 271.140**

**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.**

**ANALYSIS:** The City did not have title to any of the properties proposed to be vacated. The covenant was a tool used to allow the City to accept a ROW dedication when/if the City elected to use said right-of-way. Therefore, no title of any kind will change, the only action that will result is the elimination of the covenant.

**FINDING:** Based on the analysis above, this regulation does not apply.

#### **ORS 271.150**

**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.**

**FINDING:** The action will vacate the covenant. Therefore, even though this vacation is being processed in two parts, a public and a private vacation, the document that needs to be recorded (the ordinance) will be just one document. As such, the City will record all required documents with the County Clerk after the City Council adopts the ordinance.

### **ORS 271.160**

**No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.**

**FINDING:** This regulation does not apply. The area vacated will not be used to rededicate ROW to the City.

### **ORS 271.170**

**The provisions of ORS 271.080 (Vacation in incorporated cities) to 271.160 (Vacations for purposes of rededication) are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.**

**ANALYSIS:** This section allows the City to adopt regulations to use in place of the ORS street vacation regulations. The City has not, to date, adopted any regulations for street vacations. As such, the State regulations are used.

**FINDING:** Based on the analysis above, the appropriate regulations have been used for this proposed Land Use action.

**III. STAFF RECOMMENDATION**

Staff recommends the City Council approve VA 23-02 and adopt Ordinance 208-23.

**IV. EXHIBITS**

- A. Vicinity Map
- B. DRAFT Ordinance 208-23 including Deed Covenant document record No. 2014-05115
- C. Planning Commission minutes for July 9, 2013
- D. NE Mary Kay Ave. ORS 271.080 200' x 400' Map
- E. NE Lauren Ave. ORS 271.080 200' x 400' Map
- F. Petition and signatures
- G. Public Hearing Notice

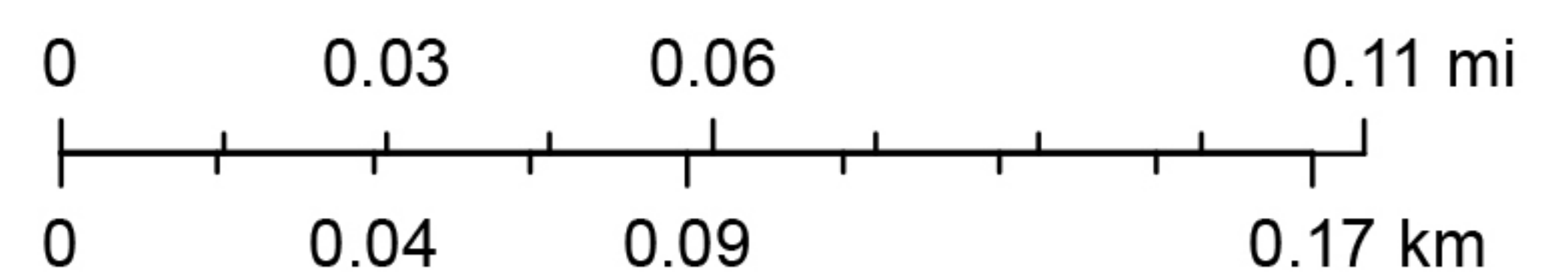
# VA 23-02 Proposed Vacations



9/26/2023, 3:39:01 PM

1:4,514

- Address
- Tax Lots
- Highways
- Roads
- Railroad
- City Boundary



City of Albany, County of Linn, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Linn County GIS, GeoTerra, 2021

## **ORDINANCE NO. XXX-23**

### **AN ORDINANCE VACATING RIGHT-OF-WAY ON A PORTION OF NE MARY KAY AVE. AND NE LAUREN AVE.**

**WHEREAS**, Ms. Lisa Lambrecht has filed a petition requesting to vacate portions of the right-of-way (ROW) for NE Lauren Ave. as reflected in a deed covenant, contained in that certain document recorded as Linn County Record No. 2014-05115 as shown on Exhibit 1; and,

**WHEREAS**, the City wishes to vacate portions of the ROW on NE Mary Kay Ave. as reflected in that same deed covenant, contained in that certain document recorded as Linn County Record No. 2014-05115 as shown on Exhibit 1; and,

**WHEREAS**, neither of the proposed vacations contain any public improvements or public utilities of any kind; and,

**WHEREAS**, neither of the proposed vacations are identified in any adopted City plans for public streets or utilities; and,

**WHEREAS**, the rights afforded to the City in the covenant are equal to dedications of ROW; and,

**WHEREAS**, the rights afforded to the City in the covenant are the same as those required by the current version of the Land Development Code should the petitioner further divide the property; and,

**WHEREAS**, the property to the west, east, and south of the proposed vacations are fully developed, and the property to the north features several alternative points of access; and,

**WHEREAS**, the vacations will have no substantial affect to the market value of property abutting the vacation; and,

**WHEREAS**, the vacations will not require any physical changes to the streets; and,

**WHEREAS**, both proposed vacations are in the public's interest; and,

**WHEREAS**, all public hearing notice requirements from ORS 271.110 have been met, including a notice published in the Albany Democrat Herold twice on consecutive weeks, notices sent to all surrounding addresses on October 18, 2023 as required in ORS 271.080, and a total of three signs placed on site on October 18, 2023; and,

**WHEREAS**, the proposal was reviewed by City staff for consistency with ORS 271.080 through 271.230 and found to be compliant; and,

**WHEREAS**, the Millersburg City Council held a fully noticed hearing on November 14, 2023; and,

**WHEREAS**, the City Council finds that all regulations are met and all findings are included in the staff report dated October 31, 2023;

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF MILLERSBURG DO ORDAIN AS FOLLOWS:** the deed covenant, Linn County Record No. 2014-05115 as shown on Exhibit 1, is hereby nullified and the City rights to dedication of NE Lauren Avenue and NE Mary Kay Avenue are therein vacated:

**PASSED by the Council and signed by the Mayor this 14<sup>th</sup> day of November, 2023.**

**This ordinance takes effect 30 days after the issuance of a certificate showing that all city liens and all taxes have been paid.**

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Scott Cowen,  
Mayor

ATTEST:

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Sheena Dickerman,  
City Recorder



I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.  
Steve Druckenmiller - County Clerk



After Recording Return To:  
Lisa Holifield  
3268 NE Millersburg Drive  
Albany, OR 97321

**DEED COVENANT**

The following covenant binds the owners and successors (hereinafter referred to as "Property Owners") in interest to property (identified on the Linn County Assessor's Map as Tax Lot 1203, Township 10 South, Range 3 West, Section 16) described in the deed records as Document Number 2013-20274 in the Linn County Clerks Office (hereinafter referred to as the "Property"):

Property Owners and their heirs, legal representatives, assigns and lessens hereby acknowledge by the placement of this covenant, or the acceptance and recording of this instrument, that the Property herein described is subject to future public right-of-ways for the extensions of Lauren Avenue and Mary Kay Avenue. The properties to the west are Tax Lot 1100 and Tax Lot 1202 of Linn County Assessor's Map Township 10 South, Range 3 West, Section 16 (hereinafter referred to as the "West Properties"). The Property Owners acknowledge that future development to the west may require the right-of-way dedications. The Property Owners shall dedicate to the public the right-of-ways when the following conditions are met:

- 1) The future right-of-ways for Lauren Avenue and Mary Kay Avenue shall be located as shown on Exhibit "A", attached hereto and made apart of by this reference. An alternate location of said Avenues may be allowed if agreed to by the Property Owners, the owners of the West Properties and the City of Millersburg.
- 2) Any future development of the West Properties shall receive approval by all applicable government agencies.
- 3) All costs associated with the construction and development of the future streets and utilities of Lauren Avenue and Mary Kay Avenue that benefit the West Properties shall be the responsibility of the owners of the West Properties or the City of Millersburg.
- 4) The West Properties may only use the future right-of-ways of Lauren Avenue and Mary Kay Avenue for a fully developed subdivision. Future streets located in Lauren Avenue and Mary Kay Avenue shall be constructed to City of Millersburg public street standards and include all utilities required to serve the future development.
- 5) This covenant does not prevent the Property Owners from further developing the property as approved by the City of Millersburg by future planning actions.

This COVENANT does not prevent the Property owners from constructing the streets and utilities for the future development of their Property. Future development shall be approved by the City of Millersburg.

Signed this 29 of April, 2014

Lisa Holifield  
Lisa Holifield

State of Oregon) ) ss  
County of Benton)

This instrument was acknowledged before me on April 29, 2014 by  
Lisa M. Holified.

Lori A. Stutzman  
Notary Public



My Commission Expires: February 1, 2016



**MILLERSBURG PLANNING COMMISSION  
JULY 9, 2013**

PRESENT: Dan Nixon, Jim Lepin, Steve Vogler, Ed Perlenfein, Ryan Penning, Anne Peltier, Pat Edwards, Skylar Bailey, Don Driscoll, Barbara Castillo

The Millersburg Planning Commission was called to order at 6:30 p.m. by Chairman Ed Perlenfein.

**MINUTES OF MAY 14, 2013**

*Dan Nixon moved, seconded by Jim Lepin to approve the minutes of May 14, 2013.*  
The motion passed.

**HOLIFIELD PARTITION TENTATIVE PLAN REQUEST**

Don Driscoll explained that the new staff report the Planning Commission received for the Holifield Partition Tentative Plan Request includes a copy of the application, site plan, copy of the staff report, and the response from the applicant's engineer regarding certain conditions of approval.

The owner/applicant is Lisa Holifield who is requesting to divide her existing 9.79 acre property into three Urban Conversion parcels that exceed the 10,000 square foot minimum for her two sons. The request is for a land partition and not a subdivision.

The applicable criteria are spelled out in the staff report. Driscoll said that the city has a provision in the Land Use Development Code that each of the rural parcels can be converted to an urban conversion if they can get sewer, water and access to a public street. If you meet those conditions, you can convert the property to 10,000 sf parcels. Access to the southern two parcels would be from Lauren Avenue, where they would also access city water and sewer.

Half of parcel 2 is in the flood plain although there is an area outside of the flood plain where a house can be built.

Don went through the applicant's answers to the Conditions of Approval. The applicant has requested changes to three of the Conditions of Approval. They are:

3. The Applicant shall provide a 25-foot wide access and utility easement and a 20-foot wide paved private roadway from Lauren Avenue serving Parcels 2 and 3. Covenant agreements for Parcels 2 and 3 shall be provided specifying the legal requirements for the continued maintenance of the private street by the accessing property owners.

*Response: The Applicant will provide private easements for the new driveways and utilities that will serve the Parcels 2 and 3. Legal requirements for the*

*maintenance of the driveways will be addressed in the Final Plat or by separate document. The Applicant requests that this condition be modified to allow the driveways to be either gravel or paved.*

4. The Applicant shall provide 60-foot wide easements for the extension of Mary Kay Avenue and Lauren Avenue that are needed to serve future developments on and beyond the Applicant's property. Easements shall be converted to right-of-ways if and when requested by the City. The proposed private road may be contained within the Lauren Avenue Easement.

*Response: The Applicant believes that providing 60 foot wide easements for the future extension of Mary Kay and Lauren is premature. The actual configuration of any future development is unknown at this time. The Applicant acknowledges that there may be a future need to extend the right-of-ways but does not wish to do so until there is a definite plan and project in place. The Applicant does not want to be locked into a location that does not work well with the future development. The Applicant requests that this condition be modified.*

12. Future buildings shall be located outside of the Flood Plain and Wetlands and the Flood Plain and Wetland areas shall be protected.

*Response: The Applicant reserves the right to obtain fill permits for the Flood Plain areas and the right to Delineate Wetland areas. The Applicant requests that this condition be modified to allow future development within the Flood Plain and Wetland areas as long as the proper state and local permits are obtained.*

The Planning Commission had a discussion on the possibility of future development to the west of the property and the need for the applicant to oversize the water and sewer lines for future development. Driscoll said there will most likely be a subdivision at some point on the Turnidge property to the west although city services are available from Millersburg Drive.

***A letter from Joel Kalberer of Weatherford Thompson Attorneys at Law representing Swan Investment Company LLC was introduced into the record. The letter objects to the proposed partition because the applicant has not submitted a complete application as required under the development code and the lack of evidence necessary to support the criteria required by the City.***

Dan Watson of K & D Engineering said he wants to make sure that the Mary Kay extension is not required because that easement has no connection to doing the partition to the south. Mary Kay parallels the power lines. Watson said Lauren wasn't dead-ended because it left potential lots along Crooks Creek.

Don Driscoll explained that no oral testimony from the audience could be taken because the meeting was advertised as a limited land use decision as a review decision and can't allow people to speak.

Driscoll told the Planning Commission that if you decide that you don't want to make a decision this evening, you can move it to the next time period.

Ed Perlenfein said the application is not out of the ordinary.

*Steve Vogler moved, seconded by Skylar Bailey to approve the Holifield Partition Tentative Plan Request contingent upon compliance with the Findings and Conditions of Approval contained in the Staff Report as modified by the Planning Commission.*

THE CONDITIONS OF APPROVAL AS MODIFIED ARE:

Approval may be granted for the Holifield Land Partition Request subject to compliance with the following Conditions of Approval. The applicable Sections of the **Millersburg Code** are noted.

1. The Applicant shall comply with the **Final Partition Plat** requirements of **Section 2.330** of the **Code**.
2. No site development plan is required or presented at this time. Property Owners shall submit building plans to the City for Building Permit approval.
3. The Applicant shall provide a 25-foot wide access and utility easement and **a 20-foot wide and 25-foot in length** paved private roadway from Lauren Avenue serving Parcels 2 and 3. Covenant agreements for Parcels 2 and 3 shall be provided specifying the legal requirements for the continued maintenance of the private street by the accessing property owners.
4. The Applicant shall provide a covenant or waiver of remonstrance to provide for 60-foot wide easements or right-of-way for the extension of Mary Kay Avenue and Lauren Avenue that may be needed to serve future developments on and beyond the Applicant's property if and when requested by the City.
5. The Applicant shall provide adequate Clear Vision Areas in accordance with **Section 5.122 (6)** of the Millersburg Code for all vehicle ingress and egress to the properties.
6. The Applicant shall provide verification of approved access for fire protection administered by the Jefferson Fire Protection District.
7. Municipal water and sewer are available from Lauren Avenue and are required to serve Parcels 2 and 3 from an underground service system.

8. Future connections to municipal water and sewer shall be verified with the City Engineer prior to construction. All work shall remain open for inspection and approval prior to backfilling.
9. Water systems shall comply with the fireflow needs for the development.
10. Other public and private utilities to serve the proposed Partitions shall be coordinated and provided. All utilities shall be underground as specified in **Section 5.129** of the **Code**.
11. The Applicant and Property Owners shall maintain proper drainage and shall not direct drainage across another property except within a continuous drainageway. Maintaining proper drainage is a continuing obligation of the property owners.
12. Future development may be located within the Flood Plain and Wetland areas as long as the proper state and local permits are obtained.
13. All partition requirements and Conditions of Approval specified herein shall be provided prior to signing the final Partition Plat.
14. Any Tentative Plan changes shall be submitted to the City for approval. If proposed changes are not in conformance with City Ordinances or the approved Tentative Plan, the Applicant shall be notified and the non-complying elements shall be corrected and resubmitted prior to approval of the Final Plat.

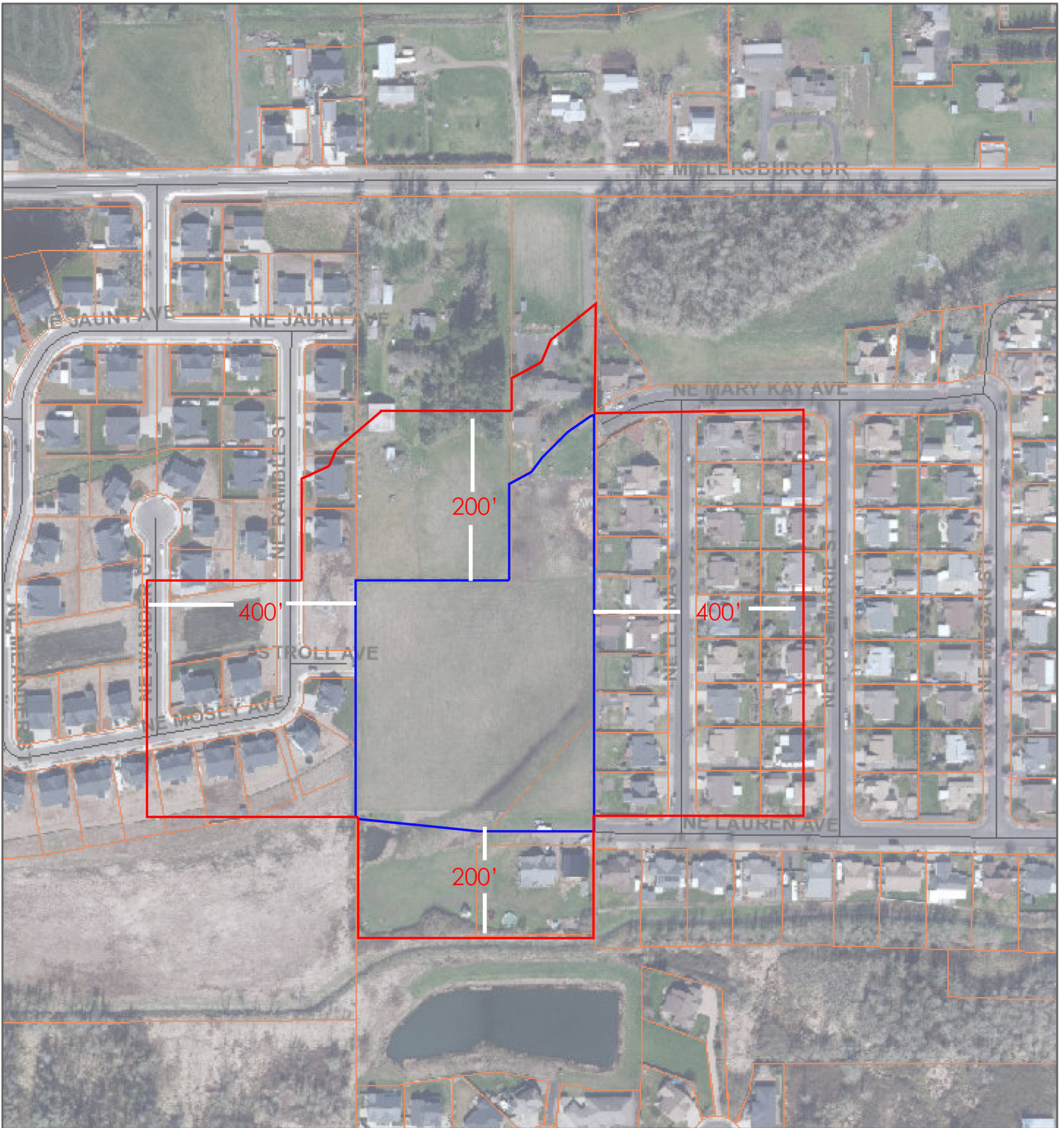
The motion passed unanimously.

Respectfully submitted,



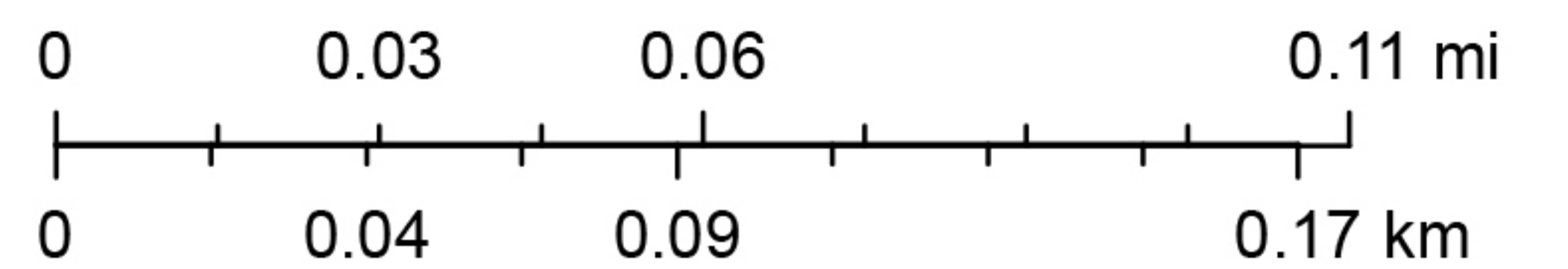
Barbara Castillo  
City Administrator/Recorder

# VA 23-02 City Portion



10/9/2023, 12:22:11 PM

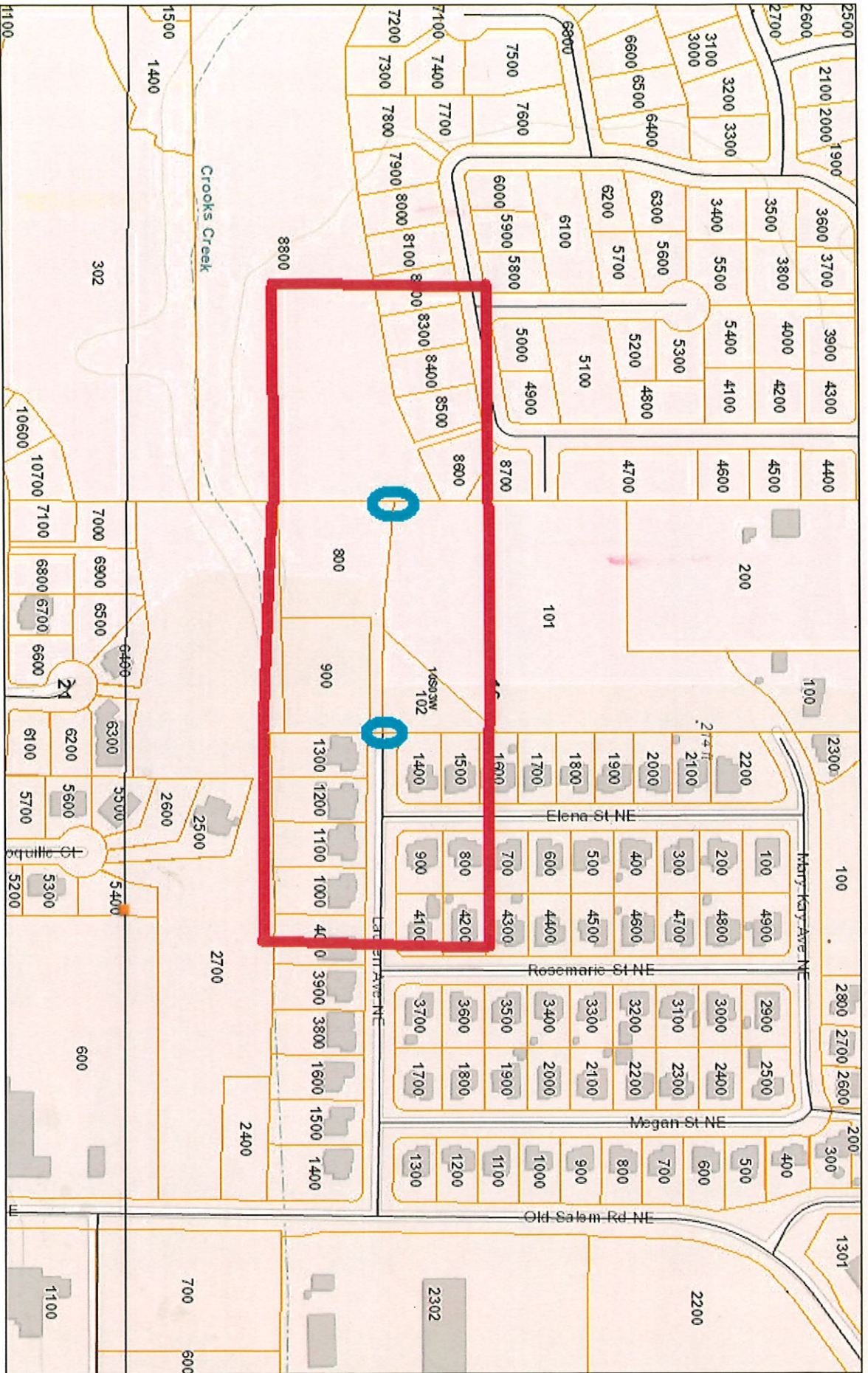
1:4,514



- Highways
- Roads
- Railroad
- City Boundary
- Tax Lots

City of Albany, County of Linn, Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Linn County GIS, GeoTerra, 2021

# notification area



9/12/2023, 4:10:31 PM

- Townships
- Section Corners
- Highways
- Sections
- County Boundary
- Cities
- Roads
- Tax Lots

## Petition to Millersburg

I Lisa Lambrecht am hereby petitioning the City of Millersburg to release the Covenant of Deed placed on my properties pertaining to Lauren Ave. future right of way.

3250 Ne Lauren Ave

3255 Ne Mary Kay Ave

Lisa Lambrecht

*Lisa Lambrecht*

Petition to To the City to release the Covenant of Deed pertaining to Ne. Lauren Ave. For Lisa Lambrecht's properties.

Lisa Lambrecht  
3250 Ne Lauren Ave

*Lisa Lambrecht*

3255  
Mary Kay Ave

Bryan and Kendra Rehnberg  
3248 Ne Lauren Ave

West Valley Homeowners Ass.  
PO BOX 1232  
97321

Ted and Martha Benson  
3336 Nw Lauren Ave

*Ted Benson*  
*Martha Benson*

Angela Pegorin Cinzia and  
Travis Kennison  
3344 NE Lauren Ave

*Romya Pegorin*

Darlene Saulmon Trustee  
3352 Ne Lauren Ave

*Darlene Saulmon*

Charles and Jill Hersey  
3360 Ne Lauren Ave

*Charles Hersey*

Walter and Lorraine Leathers  
3368 Ne Lauren Ave

*Walter Leathers*

Megan Black  
6194 Ne Rosemarie St

James and Michelle Davis  
6208 Ne Rosemarie St  
Po Box 32

*James Davis*



Jefferson OR 97352

Douglas Bauer Rev.Liv. Trust ET AL  
6193 Ne Elena St



Stuart and Gwen Conser Living Trust  
6207 Ne Elena St  
Po Box 784  
Albany 97321

Elias and Debra Mendez  
6192 Ne Elena St



Robert and Cathy McGinnis  
6206 Ne Elena St



Kyler Gulasky and W. Nelson-Vasquez  
6201 Ne Ramble St



Ryan and Melissa Schulze  
3054 Ne Mosey Ave



Margerat Killgorecathcart Rev. Trust  
3052 Ne Mosey Ave



Carmen Weber and Michael Mueller  
3050 Ne Mosey Ave

Chantal Wheatley and Kelly Brackin  
3048 Ne Mosey Ave



Mathew and Carey Spencer  
3046 Ne Mosey Ave.





**NOTICE OF PUBLIC REVIEW**  
**November 14, 2023, 6:30 p.m.**  
**The hearing will be in person and**  
**by phone/computer.**

**See Agenda on the City website for details.**

The City of Millersburg will hold a **CITY COUNCIL** hearing on November 14, 2023 at the above time and place to consider the action described below. The action may be heard later than the time indicated, depending on the agenda schedule. Interested parties are invited to send written comment or attend the hearing. A staff report relating to the proposal will be available seven (7) days prior to the first public hearing. For further information, contact Millersburg City Hall at (458) 233-6306.

The location of the meeting is accessible to the disabled. If you need any special accommodations to attend or participate in the meeting, please notify City Hall twenty-four (24) hours before the meeting.

**PETITIONER:** Lisa Lambrecht (for NE Lauren Ave)

**LOCATION:** At the end of NE Lauren Ave. Specifically 3250 NE Lauren Ave and 3248 NE Lauren Ave. and the future right-of-way for Mary Kay Ave on the property west of the Morningstar subdivision, which is currently a vacant lot with the address 3255 Mary Kay Ave.

**CRITERIA:** The City has no criteria for a street right of way vacation, thus the Oregon Administrative Rules (OAR) 271.120 and 130 are applicable.

**FILE No.:** VA 23-02 (Street Right of Way Vacation)

**REQUEST:** The Petitioner divided the property near at the end of NE Lauren Ave. Part of the conditions of approval for that partition was to enter into a covenant that would allow the City to extend NE Lauren Ave. and Mary Kay Ave. if the City ever elected to. The Petitioner has requested that the City release a covenant, explaining it is no longer needed, meaning there is no longer a need for NE Lauren Ave. to extend further than it does today. The City expanded the request to include NE Mary Kay Ave. on Ms. Lambrecht's property as well because it was also bound by the recorded covenant.

For more information see:

<https://www.cityofmillersburg.org/planning/page/va-23-02-lisa-lambrecht-vacation>