

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-1

DATE: August 28, 2008

SUBJECT: First Reading of Ordinance Approving
Vacation of a portion of Sultan Basin Road
Terra Ex Land Group, Petitioner

CONTACT PERSON: Robert Martin, Community Development Director



ISSUE:
Vacation of a portion of Sultan Basin Road.

STAFF RECOMMENDATION:
Staff recommends that Council:
Conduct the first reading of Ordinance 989-08.

SUMMARY:
Vacation of a public right-of-way is a process controlled by statute (RCW 35.79). Once a petitioner has completed the submittals required by the statute, it is necessary for the legislative body (or designee) to hold a public hearing. The City Council carries that responsibility in Sultan.

In a vacation, the petitioner is not purchasing land. The petitioner is purchasing the public right-of-way (the public's right to access across the land) that is a legal encumbrance on the land.

Terra Ex Land Group is requesting vacation of approximately 860 lineal feet of un-used right-of-way of Sultan Basin Road north of its previous intersection with Hwy. 2 (Attachment C). Sultan Basin Road has been reconstructed such that its intersection with Hwy. 2 is approximately 600 feet east of its previous intersection. The right-of-way proposed for vacation is no longer used as a public traveled way. The petitioner is pursuing a commercial development that will include the land proposed for vacation.

Petitions for vacation must be accompanied by:

1. Appropriate fees (received)
2. An appraisal of the property by a qualified appraisal firm (received).
3. Legal description of the property proposed for vacation (received).
4. Signatures of at least 2/3 of the property owners abutting the proposed vacation (received).
5. Indication that no property will lose legal access to a public right-of-way through the proposed vacation (received).
6. A discussion of the public interest served by the proposed vacation (received).

ANALYSIS:

1. The statute (RCW 35.79.010) requires that a vacation petition be "signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated." The petitioner owns property well in excess of the two-thirds minimum. There is only one other owner abutting. This owner is not required to sign the petition.
2. The right-of-way proposed for vacation occupies 43,743 sq.ft. (just over one acre).
3. If the vacation is ultimately approved, the right of access for a public street will no longer exist. Since there are utilities in the street corridor, the city will need to retain easements for the operation and maintenance of these utilities. This will limit use of the vacated corridor to parking lots, landscaping, and other uses that do not include construction of buildings.
4. The application shows that all affected properties will retain access to public roads.
5. The application indicates that the public interest served by the petition is pursuit of a commercial development that will benefit the community's economic development interests. (Note that consideration or approval of the street vacation does not imply any such consideration or approval of the intended commercial development.)

ALTERNATIVES:

1. Conduct the first reading, thereby continuing the vacation process.
2. Do not conduct the first reading, thereby terminating the vacation process.

FISCAL IMPACT:

1. It is expected that the municipality receives, on behalf of the public, compensation for the public's loss of access rights. An independent appraisal paid for by the petitioner is the customary basis for establishing the value. If, after the public hearing, Council determines to continue action on the vacation, Council has the option of hiring its own appraiser for a second opinion.
2. The appraisal submitted by the petitioner has been completed by a Certified General Appraiser (Paul C. Bird of Macaulay & Associates Limited). He has determined the value of the acquired right-of-way (subject to ongoing utility easements which prevent building of structures on the vacated property) to be \$130,000.
3. RCW 35.79.030 provides that the owners abutting the right-of-way
"shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, ... the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value."
4. As this has been right-of-way for over twenty-five years, the Council has the prerogative of charging up to the full appraised value. For a vacation in July of 2005, the City charged one-half of the appraised value, but this is not a

precedent. There is no code-prescribed or statute-prescribed methodology for negotiating the charge other than that cited in item 6 above.

5. The statute requires that at least one-half (1/2) of the amount received be expended on "acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town."

DISCUSSION:

Ordinance No. 989.08 vacates approximately 860 lineal feet of the closed section of SBR north of and adjacent to the new intersection with US 2.

The ordinance sets the consideration for vacation at one-half the appraised value (\$65,000.00) determined by the petitioner's appraiser.

State Statute RCW 39.79.030 requires that at least one-half (1/2) of the amount received (32,500.00) be expended on "acquisition, improvement, development etc.. City Staff recommend the City Council use \$32,000.00, to support the 2009 Parks Operating Budget for maintenance of public open space.

The remaining \$32,500.00 should be put into the contingency fund to be used if necessary to balance the 2008 budget or cover any unanticipated expenses.

RECOMMENDED ACTION:

1. Conduct the first reading of Ordinance 989-08

ATTACHMENTS:

Attachment A: Draft of Ordinance 989-08, including "Exhibit A" and "Exhibit B".

ORDINANCE 989-08
AN ORDINANCE OF THE CITY OF SULTAN, VACATING A PORTION OF SULTAN
BASIN ROAD NORTH OF ITS CLOSED INTERSECTION WITH STATE ROUTE 2 IN
THE CITY OF SULTAN, WASHINGTON.

WHEREAS, Terra X Land Group has filed a complete petition for vacation of a portion of Sultan Basin Road as provided by RCW 35.79; and

WHEREAS, Terra X Land Group owns land in excess of the minimum of two-thirds (2/3) of the land abutting the right-of-way proposed for vacation as required by RCW 35.79.010, and is therefore qualified to submit a petition for vacation of the subject right-of-way; and

WHEREAS, the City of Sultan Planning Board held a public hearing on this amendment proposal at its regular meeting of May 6, 2008; and

WHEREAS, the City Council held a public hearing on this vacation petition at its regular meeting of August 14, 2008;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN , WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Street Vacation: The following described portion of right-of-way commonly known as the 860 lineal feet of the closed section of Sultan Basin Road directly north of and adjacent to its intersection with State Route 2 is hereby vacated:

“**Exhibit A**”, a map of the subject right-of-way is attached and hereby made a part of this ordinance.

“**Exhibit B**”, “RIGHT OF WAY VACATION LEGAL DESCRIPTION” which describes the right-of-way to be vacated by this ordinance is attached and hereby made a part of this ordinance.

The City of Sultan retains all existing easements burdening the vacated property, and likewise retains the right to grant additional easements necessary or useful for public utilities and services as authorized by RCW 35.79.030.

Section 2. Consideration for Vacation: The vacation authorized in Section 1 of this ordinance shall be effective only upon payment of \$65,000 by petitioner to the City of Sultan. At least one-half of such amount shall be dedicated for the acquisition or maintenance of public open space or transportation capital projects within the City of Sultan, as required by RCW 35.79.030.

Section 3. Recording with County Auditor: The City Clerk is requested to record with the Snohomish County Auditor a certified copy of this Ordinance.

Section 4. Severability: Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 5. Effective Date: This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force (5) days after the date of publication.

PASSED by the City Council and **APPROVED** by the Mayor the ___th day of _____, 20__.

CITY OF SULTAN

By _____
Carolyn Eslick, Mayor

Attest:

By _____
Laura Koenig, City Clerk

Approved as to form:

By _____
Kathy Hardy, City Attorney

EXHIBIT A

LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N 66°16'13" E	32.99
L2	N 89°59'20" E	30.00
L3	N 00°51'13" E	31.14
L4	N 89°11'51" E	20.01
L5	N 89°08'47" W	10.00
L6	N 66°16'13" E	32.99

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	13°49'53"	535.00'	129.15'

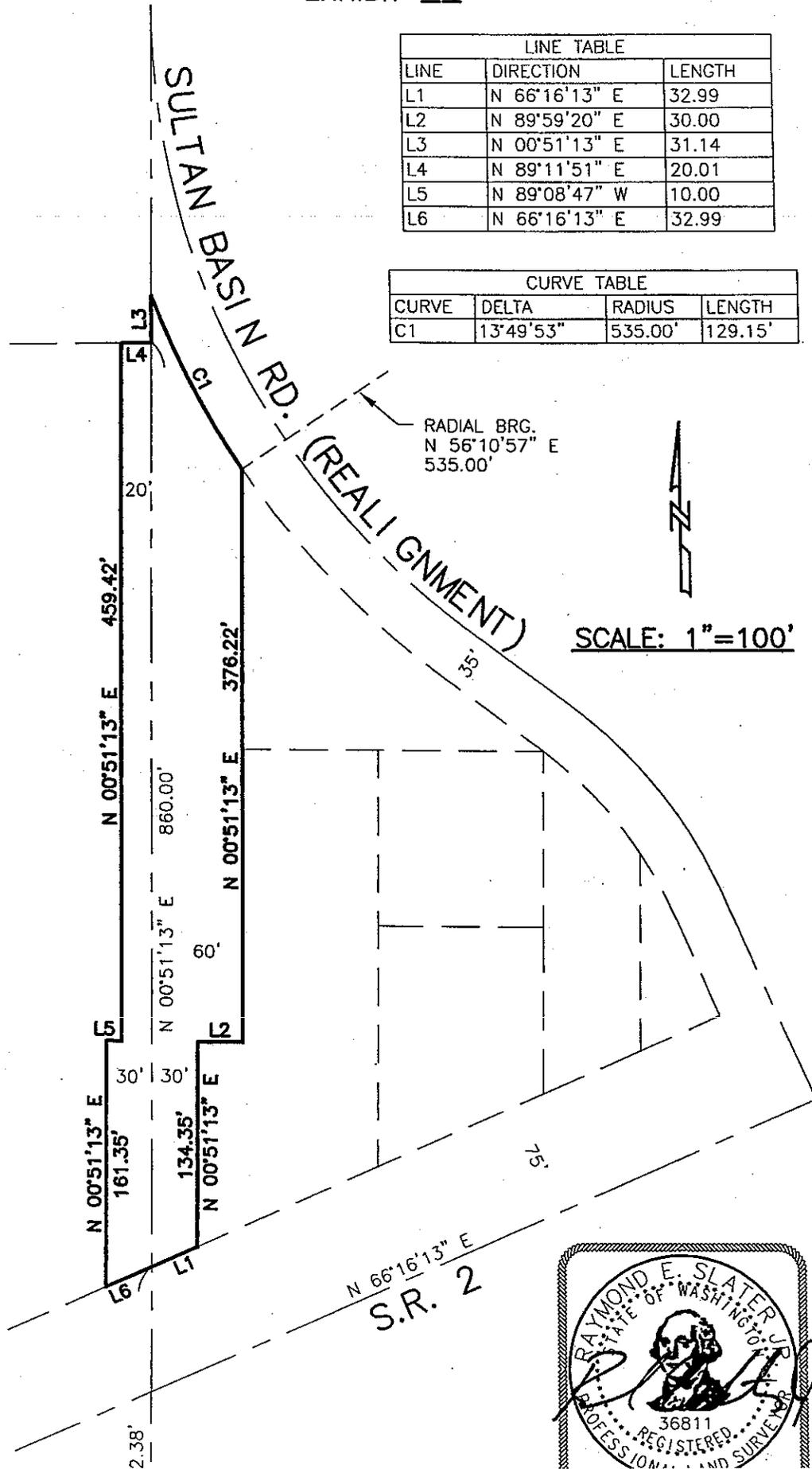


EXHIBIT B

RIGHT OF WAY VACATION LEGAL DESCRIPTION

THAT PORTION OF SECTIONS 32 AND 33, TOWNSHIP 28 NORTH, RANGE 8 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 33; THENCE NORTH $00^{\circ}51'13''$ EAST ALONG THE WEST LINE THEREOF 252.38 FEET TO THE NORTHERLY MARGIN OF STATE ROUTE 2 AND THE TRUE POINT OF BEGINNING; THENCE NORTH $66^{\circ}16'13''$ EAST ALONG SAID MARGIN 32.99 FEET TO A POINT 30 FEET EAST OF SAID SECTION LINE AS MEASURED AT RIGHT ANGLES THERETO; THENCE NORTH $00^{\circ}51'13''$ EAST PARALLEL WITH SAID SECTION LINE 134.35 FEET; THENCE NORTH $89^{\circ}59'20''$ EAST 30.00 FEET TO A POINT 60 FEET EAST OF SAID SECTION LINE AS MEASURED AT RIGHT ANGLES THERETO; THENCE NORTH $00^{\circ}51'13''$ EAST PARALLEL WITH SAID SECTION LINE 376.22 FEET TO THE SOUTHWESTERLY MARGIN OF SULTAN BASIN ROAD REALIGNMENT, BEING ON A CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS NORTH $56^{\circ}10'57''$ EAST 535.00 FEET; THENCE ALONG SAID CURVE AN ARC LENGTH OF 129.15 FEET THROUGH A CENTRAL ANGLE OF $13^{\circ}49'53''$ TO THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE ALONG SAID WEST LINE SOUTH $00^{\circ}51'13''$ WEST 31.14 FEET TO A POINT 860.00 FEET NORTH OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33 AS MEASURED ALONG THE WEST LINE THEREOF; THENCE SOUTH $89^{\circ}11'51''$ WEST 20.01 FEET TO A POINT 20 FEET WEST OF SAID SUBDIVISION LINE AS MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTH $00^{\circ}51'13''$ WEST PARALLEL WITH SAID SUBDIVISION LINE 459.42 FEET; THENCE NORTH $89^{\circ}08'47''$ WEST 10.00 FEET TO A POINT 30 FEET WEST OF SAID SUBDIVISION LINE AS MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTH $00^{\circ}51'13''$ WEST PARALLEL WITH SAID SUBDIVISION LINE 161.35 FEET TO THE NORTHERLY MARGIN OF STATE ROUTE 2; THENCE NORTH $66^{\circ}16'13''$ EAST ALONG SAID MARGIN 32.99 FEET TO THE TRUE POINT OF BEGINNING.



11-6-07