#### **ORDINANCE NO. 429**

AN ORDINANCE OF THE CITY OF WILSONVILLE VACATING A PORTION OF EASEMENT LOCATED IN THE NORTHEAST CORNER OF SECTION 13 TOWNSHIP 3 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, COMMONLY REFERRED TO AS THE GESELLSCHAFT WELL EASEMENT.

WHEREAS, the Gesellschaft Well is located within the City of Wilsonville on a public easement and is identified as being dedicated to the City of Wilsonville in Document No. 84-07949 of the Deed Records of said County; and

WHEREAS, the owners of property bordering a portion of said easement have filed a petition with the Wilsonville City Council dated March 24, 1994, requesting vacation of a portion of the said easement and appended to such petition as part thereof, and as a basis for granting the same, their consents representing the owners of all abutting property in not less of 2/3 of the area of the real estate affected thereby, as defined in ORS 271.0808; and

WHEREAS, the Wilsonville City Council, at its regularly scheduled meeting held April 4, 1994, adopted Resolution No. 1102 and fixed Monday, May 2, 1994, at the City Council Chambers, Wilsonville City Hall Annex, 8445 SW Elligsen Road, Wilsonville, Oregon, commencing at 7:00 pm. as the time, date and place for the formal public hearing to consider the petition; and

WHEREAS, it appears that the notice of the time, date, place and purpose of the vacation hearing was dully given in the matter and for the time required by ORS 271.110 and prior to such posting, publication and notification of said notice, the City Recorder obtained from the petitioner the sum of \$350.00 which was estimated to be sufficient to pay the City's actual costs of publications, posting, and other anticipated expenses, including the City attorney's fees as provided by ORS 271.110; and

WHEREAS, the formal public hearing on the question of such vacation was dully and regularly held at the time, date and location as advertised and no one appeared in person or otherwise to object to or to remonstrate against the request and proposed vacation and thereafter, the City Council concluded as follows:

1. The written and acknowledged consents of not less than 2/3 of all abutting property owners and/or contract purchasers of the real estate property affected by the

petition have been obtained.

- 2. The required notice of the request for vacation was given.
- 3. The public interest will not be prejudiced by the proposed vacation.
- 4. All City liens and all taxes have been paid on the land which is to be vacated.
- 5. The vacation will not substantially affect the abutting properties and no damages are payable.
- 6. The proposed use is consistent with the present use of the adjoining property, the use for the zone in which it is located and the City's development plan for the area.

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

#### Section 1

The portion of the Gesellschaft Well easement situated in the City of Wilsonville, Clackamas County, Oregon, described as follows shall be vacated and the vacation thereof shall be effective on the adoption of this Ordinance after the second and final reading as provided by the Wilsonville Charter:

That portion of the Northeast quarter of Section 13, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon, more particularly described as follows:

Beginning at a point on the South line of said North East quarter that lies North 89° 31 minutes 58 seconds East, 573.57 feet from the center of said Section 13; thence South 89° 31 minutes 58 seconds West, 18.75 feet along said South line of the Northeast quarter to a point on the West line of that track of land described in Document No. 84-07949 of the Deed Records of said Clackamas County; thence along the boundary of said tract North 00° 06 minutes 58 seconds East, 69.02 feet; then South 89° 53 minutes 02 seconds East, 100.00 feet thence South 00° 06 minutes 58 seconds West, 18.00 feet; thence leaving said boundary South 89° 31 minutes 58 seconds West, 81.76 feet; thence South 00° 28 minutes 02 seconds East, 50.00 feet to the true point of beginning. Containing 0.06 acres more or less.

#### Section 2

That the title to the area vacated shall be attached to the land bordering on such area as provided by ORS 271.140, Section 3. The following conditions set forth at the Public Hearing shall be completed as follows:

- (a) At such time as the property located immediately South of the subject easement area be developed, the property owner shall dedicate to the City an area encompassing the Gesellschaft Well with the following dimensions: 100 feet by 100 feet.
- (b) The developer shall dedicate to the City adequate access to provide for vehicular access to the subject site from SW Meadows Loop. Section 3

That upon final recording and enactment of this Ordinance, the Wilsonville City Recorder shall prepare and file for record with the Clackamas County Recorder a certified copy of the Ordinance with the Clackamas County Assessor and the Clackamas County Surveyor as required by the provisions of ORS 271.150.

SUBMITTED to the City Council of the City of Wilsonville and read for the first time at a regular meeting thereof on the 2nd day of May 1994, and scheduled for a second reading at a regularly scheduled meeting of the Wilsonville City Council, May 16, 1994, commencing at the hour of 7:00 p.m., at the City of Wilsonville Community Development Hearings Room.

	Vera a Rojas
	VERA A. ROJAS, CMC/AAE, City Recorder
	ENACTED by the City Council on the 16th day of May, 1994, by the following
votes.	YEAS: <u>5</u> NAYS: <u>0</u>
	Vera a Rajas
	VERA A ROJAS, CMC/AAE, City Recorder
	DATED and signed by the Mayor this 18th day of May, 1994.

GERALD A. KRUMMEL, Mayor

SUMMARY of Votes:

Mayor Krummel <u>AYE</u>

Councilor Lehan AYE

Councilor Hawkins <u>AYE</u>

Councilor Benson <u>AYE</u>

Councilor Sempert AYE

ORDINANCE NO. 429 CB-O-209-94



30000 SW Town Center Loop E Wilsonville, Oregon 97070 FAX (503) 682-1015 (503) 682-1011

## ENGINEERING DEPARTMENT STAFF REPORT & RECOMMENDATION

DATE:

MAY 16, 1994

TO:

HONORABLE MAYOR AND CITY COUNCILORS

FROM:

MICHAEL A. STONE, P.E.

**CITY ENGINEER** 

SUBJECT:

GESELLSCHAFT WELL EASEMENT

#### **SUMMARY**

At the May 2, 1994, City Council meeting the Council adopted by, first reading only, an Ordinance vacating a portion of the Gesellschaft Well easement located on property immediately adjacent to Phases 6 and 7 of the Wilsonville Meadows subdivision. Subsequent to a motion by the Council, the public hearing portion of the process was delayed until May 16, 1994.

Council's request of staff was to collect additional information as to the possibility of an easement for Pedestrian/Bikeway purposes extending from the cul-de-sac at the south end of Cascade Loop to Meadows Parkway which extends eastward to Wilsonville Rd. and the grade/high school sites.

#### **DISCUSSION**

Following the City Council meeting, I approached Mr. McElroy of the Robert Randall Co. regarding the possibility of acquiring the necessary easements to allow for the construction of the Pedestrian/Bikeway. In addition, I asked staff to research our records regarding the easement and the issuance of Building Permits in and around the surrounding area.

In my conversations with Mr. McElroy he indicated that all of the lots within the Wilsonville Meadows No. 6 and 7 subdivision are either in the process of construction or money has been

"Serving	The	Commu	nity	With	Pride"
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deposited by private citizens. Subsequent to my conversations with Mr. McElroy, I spoke with Mr. Steve Mozinski, Vice President of the Robert Randall Co. During the discussion he confirmed that the Robert Randall Co. no longer adequately controls any of the properties through which a Pedestrian/Bikeway could be constructed. Mr. Mozinski has prepared a letter outlining his company's position on this matter and the letter is attached (Exhibit A).

In researching the files on the referenced well, it appeared that originally the well was obtained by the city from the Gesellschaft Development, Inc. under an agreement (copy attached, Exhibit B). The conditions of the respective parties pertaining to the easements were outlined. Within the agreement there is language which indicates that the city, at such a time in the future, upon the grantor constructing an adequate access to the well site will vacate the access easement portion which extends eastward to Wilsonville Rd. With the construction of Meadows Parkway accessed to the well site is now by hard surface except for approximately the last 200 ft. which must be gained through the old easement. This condition has been met. There is no such requirement for the well site easement itself.

With the completion of the next residential phase to the south in combination with the dedication made with Wilsonville Meadows Phase, the Robert Randall Co. will be dedicating a permanent 100' x 100' area to the city for the well site at no cost. The original area of the easement was 100' x 100'. The position of the dedicated area will be slightly south and east of the easement area.

The out of line distance that a pedestrian will have to travel to access the sidewalk on Meadows Parkway is approximately 1,000 ft. The recently adopted Bike and Pedestrian Master Plan for the city shows a minor off-street bike/pathway extending from Vlahos Drive to the school site via a route located south of the well site (see attached map, Exhibit C). The next phase of the residential development will be required to dedicate and improve this pathway.

A house is currently under construction on Lot #248 and has progressed through the framing stage. The garage for the house lies on the easement (See attached sketch, Exhibit D). At the time of plan review the location of the easement was noted. The Building Department, in conjunction with the Engineering Department determined there would be no serious effects on well operation and maintenance if a portion of the easement were vacated. The permit was issued with the desire to allow the builder to proceed without having to wait for the vacation process to

Staff Report May 16, 1994 Page 3

be completed. Staff also felt that since the developer was willing to dedicate property very nearly the same as the existing easement, this would be in the best interests of the city.

#### **STAFF RECOMMENDATION**

Staff respectfully requests that the City Council open the public hearing set for tonight and adopt the Ordinance by a second reading.

Respectfully Submitted,

Michael A. Stone, P.E. City Engineer

MAS/dr

Attachment

MS STF REPRT/gel50994

May 9, 1994

Mr. Michael A. Stone, P.E. City Engineer City of Wilsonville 30000 SW Town Center Loop E Wilsonville, OR 97070

Re: Ordinance No. CB-0-209-94

Dear Mike:

We are concerned about a pedestrian access being required for the cul-de-sac at the end of Cascade Loop.

These lots have already been sold to outside builders and Lot 248 is already under construction.

These lots were sold with the understanding that the existing easement would be vacated in return for a formal dedication of the well site to the City of Wilsonville. We formally dedicated this well site at the time of Final Plat Approval.

If the City desired to have a pedestrian pathway, it should have been required at the time of Design Review prior to Preliminary Plat Approval.

Sincerely,

Steven P. Mozinski

Sr. Vice President

SPM/bt

#### AGREEMENT

GESELLSCHAFT DEVELOPMENT, INC., an Oregon Corporation, hereinafter referred to as Grantor, hereby dedicates to the City of Wilsonville, a municipal corporation organized and existing under the laws of the State of Oregon herein after referred to as Grantee, a parcel of land as described in Exhibit "A" attached hereto and incorporated herein by reference for the sole purpose of constructing, operating and maintaining a water well, a well pump and pumphouse for future connection to a water mainline to be constructed at a later date, to supply water to the City of Wilsonville Public Water Supply System.

The GRANTOR also grants to the GRANTEE a nonexclusive easement to a strip of land fifty (50) feet in width lying twenty five (25) feet left and right of the centerline described in Exhibit "B" attached hereto and incorporated herein by this reference for the purpose of ingress and egress to and from the Well Parcel as described in Exhibit "A" for the purpose of constructing, operating and maintaining the well, pump station, building structure, underground electrical lines, underground water line to be buried at a minimum depth of three and one half ( $3\frac{1}{2}$ ) feet. This easement as described in Exhibit "B" shall be relinquished back to the Grantor at the time a Public Road is constructed on the Grantors property in which the Grantee would have ingress and egress to the Well Parcel. The grantor will agree to provide a new ingress-egress easement with the Grantee for the Well Site for which there shall be no charges for or stipulation made by the Grantor for approving said access easement.

The GRANTOR agrees that it will not drill a well be it for irrigation or domestic use within three thousand (3,000) feet of the Well Parcel as described in Exhibit "A". The Grantee shall also be notified of any proposal to construct a well for irrigation or domestic purposes outside the 3,000 foot limitation but within the Grantor's property.

The Grantor shall also grant to the Grantee a one hundred (100) foot radius access control easement, from the centerline of the well location 100 ft. in radius from that point. The access control easement as stipulated in OAR Chapter 333 42-215 Construction Standards is done so in order for water purveyors to control access of chemicals, people, debris onto, around, or near the well site within the 100 ft. radius area.

All work performed by or on behalf of the Grantee within the Well Parcel of the Access Easement as described in Exhibit "A" & "B" respectively shall be at no cost to the Grantor, and Grantee shall not permit any liens to attach to Grantor's property as a result of such work. Grantee shall assume all risks to persons or property in anyway connected with or arising out of its use of the Well Parcel or the Access Easement and shall indemnify and hold Grantor harmless from any loss, cost, damage or liability caused or resulting from any injury damage to persons or property in anyway connected with or arising out of Grantees, its officers, agents or contractors use of the Well Parcel or the Access Easement.

Immediately upon completion of the installation of the contemplated improvements including the pump house structure and appurtenance into or on the Well Parcel, Grantee shall restore the surface of the ground and install and maintain landscaping thereon to match the landscaping proposed by the property of the Grantor.

The well pump house structure plans shall be reviewed by the Grantor prior to the final installation of the structure in order for the Grantor to assure that the color and outside appearance of the pump house structure will match the proposed building structures contemplated by the Grantor for the adjacent property to the Well Parcel. The Grantor shall in writing verify the pump house structure to be satisfactory for compatability with the Grantors proposed structure according to color and/or outside appearance.

In the event that the Grantor's property adjacent to the well sight be sold in whole or in part, this agreement shall be adhered to for all or any buyers of the Grantor's property.

This agreement and the rights hereunder may not be assigned by the Grantee.

THIS AGREEMENT granted hereunder are subject to all prior easements and encumerance of record.

Dated the 19th day of January, 1984.
Grantor:
Gesellschaft Development Inc.
By: //lelleam Cr Or
Title: Confinite Commel Counsel Unestantint
The foregoing instrument was acknowledged before me, this 19th day of of/Gesellschaft Development Inc. on behalf of the Incorporation.
of Gesellschaft Development Inc. on behalf of the Incorporation.

STATE OF OREGON

SS.

January 19, 1984

County of Multnomah)

The foregoing instrument was acknowledged before me this 19th day of January, 1934, by WILLIAM C. COX, Corporate General Counsel and Vice President of GESELLSCHAFT DEVELOPMENT INC., on behalf of said comporation.

E OF 09

Before me:

Notary Public for Oregon

My corrission expires: 11/15/85

AGREEMENT - Page 2

APPROVED:	
By: Jarry R. Blanchard Public Works Department	
APPROVED AS TO FORM:	
City Attorney	
Witnessed my hand this 7th day of Jels	
OTARY	William Saurie)
Subscribed and sworn to before me this 12	day of February.
Secure con 1997	Vesa A. Kajas  Notary public for Oregon
	My commission expires: 8/23/85

#### Exhibit "A"

#### Well Site Easement

A 100 foot x 100 foot tract of land in both the southwest 1/4 of the northeast 1/4 of Section 13, and the northwest 1/4 of the southeast 1/4 of Section 13, T 3S., R.1.W., W.M. more particularly described as follows:

Beginning at a point that is N 0 degrees 35' W 69.02 feet from the east-west centerline of said Section 13 and S 89 degrees 25' W 2110.95 feet from a 1-inch iron pipe at the east 1/4 corner of said Section 13; thence East 100.00 feet to a point; thence South 100.00 feet; thence West 100.00 feet to a point; thence North 100.00 feet to the point of beginning.

The well will be located on T.L. 1900 and the easement extends to portions of T.L. 1801 and T.L. 200. as shown in Exhibit C.

1/5/84 amended to supercede 7/15/82

#### Exhibit "B"

Temporary Access Easement to Well Site:

A 50 foot wide strip of land in the northern 1/2 of the southeast 1/4 of Section 13, T3S., R.1W, W.M. the northern boundary of said strip being more particularly described as follows:

Beginning at 'a point on the east west centerline of said Section 13 that is approximately 1184 feet more or less from the east 1/4 corner of said Section 13, this point falling on the westerly right-of-way of Market Road #12 and designating the southeast property corner of Tax Lot 1801; thence westerly along the east west centerline 875 feet to a point of terminus.

1/5/84 amended to supercede 7/15/82



February 2, 1984

Council Meeting 2/6/84
Agenda Category Continuing Business

TO:

MAYOR AND CITY COUNCIL

FROM:

LARRY R. BLANCHARD, PUBLIC WORKS DIRECTOR

SUBJECT:

GESELLSCHAFT WELL AGREEMENT (REVISED)

I have reported to the City Council, at previous City Council meetings, on the progress of the well drilling for the Gesellschaft well. During the Thanksgiving holiday, adverse weather conditions tipped Staco Well Driller's rotary drilling equipment over, lodging the well bit in the hole. Staco was, at that time, placing the casing in the well to the proper depth as established by the preliminary pumping. The water consumption was determined, at that point, to be 600 gallons per minute with little or no noticable draw down. Preliminary estimates determined that a much greater quantity of water would be available, perhaps 1000 gallons per minute.

Staco Well Service, while trying to retrieve the well bit, produced sloughing of the interior wall of the well in the well hole, making it virtually impossible to continue placement of the casing. The casing was, at that time, at the 350 foot level, far below the 580 foot level, which was required. Understanding this situation, Staco Well Services asked to drill a new well eighty-five feet to the south, at no cost to the city. Staco Well Services would deduct from their total bid, by change order, all surveying costs, city staff time and any other costs attributed to their error. The amount was determined to be approximately \$1000 and will be presented to you at a subsequent Council meeting.

In the mean time, prior to any future construction, the proposed site, eighty-five feet south of the original Gesellschaft Well, must be approved by a new well agreement. Staff has revised the well description with the aid of DeHass and Associates, Inc., and included this with the original well agreement. The only changes to the revised agreement are the well description and map.

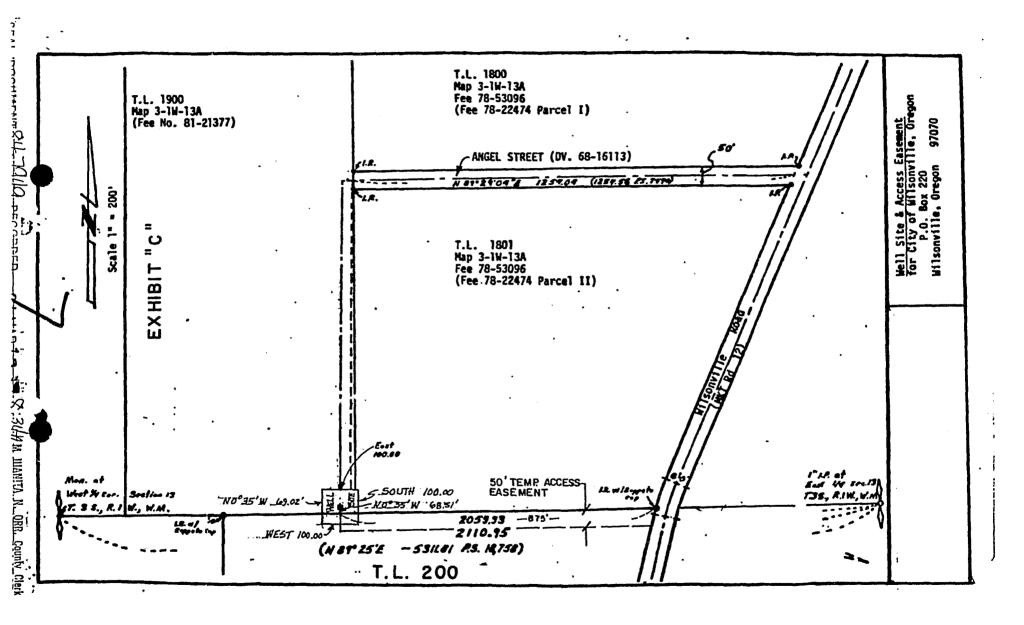
#### RECOMMENDATION

1. Approve the attached Well Agreement (Revised) for the Gesellschaft Well Project with Gesellschaft Development Company.

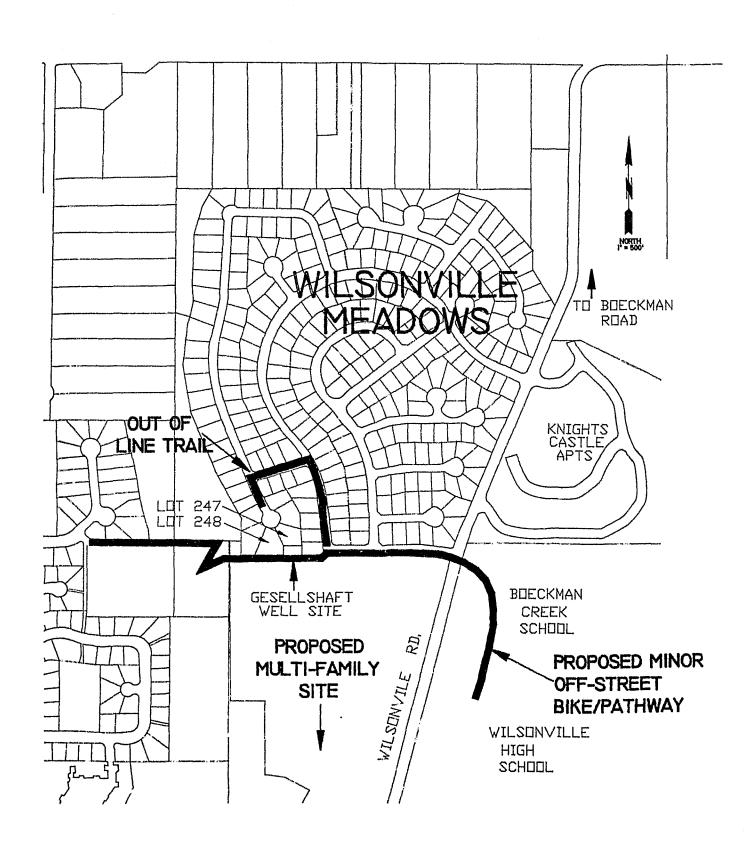
cc: Gesellschaft Well Project File

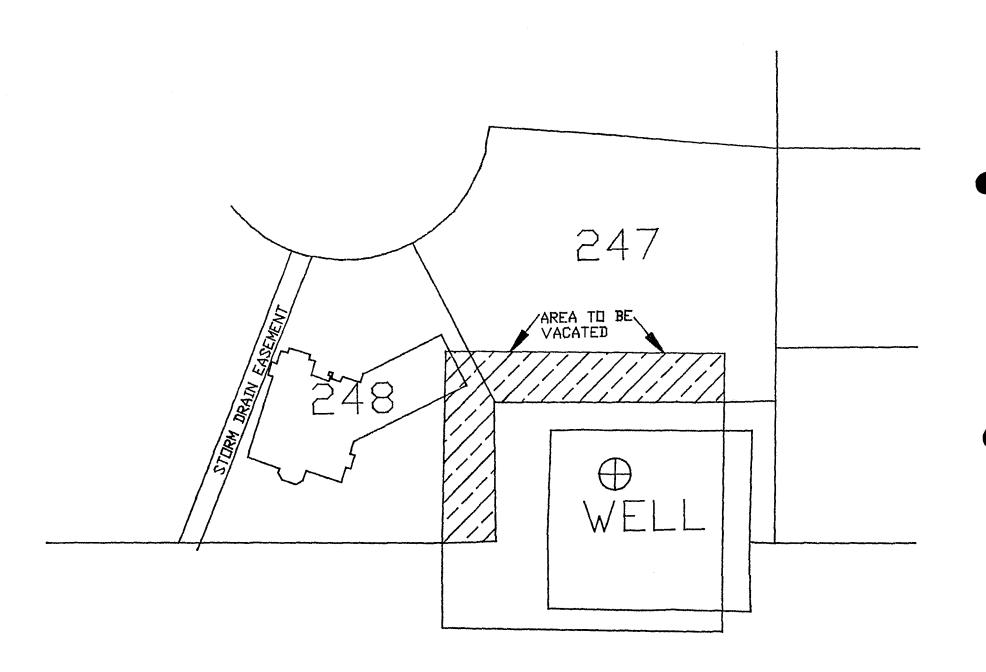
1rb:vr





# EXHIBIT C







30000 SW Town Center Loop E Wilsonville, Oregon 97070 FAX (503) 682-1015 (503) 682-1011

# ENGINEERING DEPARTMENT STAFF REPORT

DATE:

May 2, 1994

TO:

**Honorable Mayor and City Councilors** 

City of Wilsonville

FROM:

Michael A. Stone

City Engineer

SUBJECT:

Vacation of a portion of the easement containing the

Gesellschaft Well.

#### **SUMMARY:**

On March 24, 1994, city staff received a petition requesting that the city vacate a portion of the easement in and around the Gesellschaft Well. On April 4, 1994, the City Council adopted Resolution No. 1102 and fixed Monday, May 2, 1994, as the date and time for the formal public hearing to consider the vacation petition.

#### DISCUSSION:

In 1984, the City undertook the construction of an additional water supply source, commonly referred to as the Gesellschaft Well, as a project to supply domestic water to the citizens of the City of Wilsonville. This well was constructed on an easement within property that has now been developed as the Wilsonville Meadows subdivision.

With the platting of the last phases of the subdivision, some of the property that is contained within the easement abuts and is contained within two of the lots, specifically Lot #247 and #248.

The petition that the city has received, requests that the easement be adjusted around the Gesellschaft Well site to allow for a portion of the easement to become a permanent portion of the referenced subdivision lots. The reason for this request is to allow the lots to become buildable while at the same time respecting the city's position to maintain an unimpacted area in and around the well site.

Staff has reviewed the petition request and in conversations with the developer and impacted property owners have come to an agreement that the relocation of the easement will be in the best interests of the City of Wilsonville in that the property owners can use some of the easement area as the buildable area for the lots while the city still retains the necessary area surrounding the well for proper operation and maintenance. The developer of the subdivision is also the owner of the property located immediately around the well site and has agreed to dedicate the well site property to the city rather than on an easement as currently exists.

The vacation is in accordance with the applicable sections of the Oregon Revised Statutes which require that specific distances be maintained between the well site and any pipelines that may be constructed in and around the area. These restrictions are indicated on the plat for the Wilsonville Meadows subdivision and run with title to the lands.

#### RECOMMENDATION:

Given that the city will continue to maintain the same amount of impacted area in and around the Gesellschaft Well and the developer has agreed to dedicate the property to the city, and that any pipeline installations requirements are indicated on the subdivision plat, the City Engineer respectfully requests that the City Council approve the vacation request.

It is noted that the developer has paid all the necessary fees for the vacation procedure and no city funds have been expended on this vacation request other than staff time in processing the necessary paper work.

Respectfully Submitted,

Michael A.S.

Michael A. Stone, P.E.

City Engineer

MAS/dr

Attachment

MS STF REPRT/vacgel42694



## NOTICE OF PUBLIC HEARING

### **FOR**

## **RIGHT-OF-WAY VACATION**

NOTICE ON PETITION OF PACIFIC FRONTIER WOOD MARKETS, INC., AND PALLADIAN PROPERTIES, INC., FOR DECLARING AND AUTHORIZING VACATION OF A PORTION OF PUBLIC PROPERTY RIGHT-OF-WAY KNOWN AS THE GESELLSCHAFT WELL RIGHT-OF-WAY, WILSONVILLE, CLACKAMAS COUNTY, OREGON.

NOTICE IS HEREBY GIVEN that on Monday, May 2, 1994 at 7:00 p.m. at the Community Development Hearings Room, 8445 SW Elligsen Road, Wilsonville, Oregon, or to such other place or time to which the Council may adjourn, the Wilsonville City Council will hold a public hearing on the petition of Pacific Frontier Wood Markets, Inc., and Palladian Properties, Inc., for an order declaring and authorizing vacation of a portion a public property right-of-way known as the Gesellschaft Well right-of-way. Petitioners have caused a dedication of land in exchange for the proposed vacated property. The petition was filed March 31, 1994, in the office of the City Recorder. interested persons may examine the petition at the Wilsonville City Hall anytime between the hours of 8 a.m. and 5 p.m., Monday through Friday. Any objections or remonstrances to the said petition may be made in person before the Wilsonville City Council at said hearing or made in writing and mailed or filed with the Wilsonville City Recorder prior to said hearing. Any and all objections or remonstrances made at such hearing or filed in writing prior, thereto, will be heard and considered by the City Council.

The right-of-way set to be vacated is a portion of public property right-of-way known as the **Gesellschaft Well** situated in Section 13A, Township 3 South, Range 1 West, Tax Lot 1900, consisting of approximately 0.06 acres, more or less. This property lies west of Meadows Loop and south of Cascade Loop in the Wilsonville Meadows development. The right-of-way to be vacated is more particularly described as follows:

That portion of the Northeast quarter of Section 13, Township 3 South, Range 1 West, W.M., Clackamas County, Oregon. More particularly described as follows:

Beginning at a point on the South line of said Northeast quarter that lies N89°31'58"E, 573.57 feet from the center of said Section 13; thence S89°31'58"W., 18.75 feet along said South line of the Northeast quarter to a point on the West line of the tract of land described in Document No. 84-07949 of the deed records of said County; thence along the boundary of said tract, N00°06'58"E, 69.02 feet; thence S89°53'02"E, 100.00 feet; thence S00°06'58"W, 18.00 feet; thence leaving said boundary, S89°31'58"W, 81.76 feet; thence S00°28'02"E, 50.00 feet to the point of beginning. Containing 0.06 acres, more or less.

The petition of Pacific Frontier Wood Markets, Inc., and Palladian Properties, Inc., and the hearing therein is pursuant to the provisions of Oregon Revised Statues 271.080 to 271.230 and the action of the City Council at a regular meeting thereof on April 4, 1994, which allowed the said public hearing.

Dated this 21st day of April, 1994.

VERA A. ROJAS, ĆMC/AAE

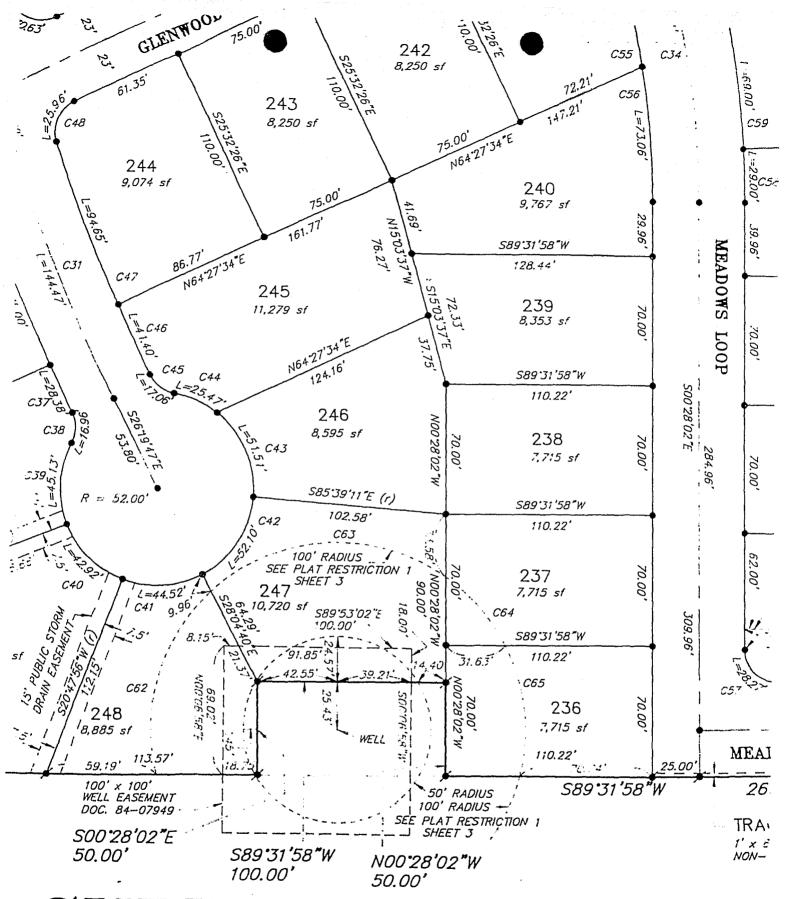
Wilsonville City Recorder

Wilsonville City Hall

30000 SW Town Center Loop East

Wilsonville, OR 97070

Telephone: 682-1011



# SURVEYOR'S COPY

1 A F O U II