

ORDINANCE NO. 5683

AN ORDINANCE VACATING A PORTION OF DAVIDSON STREET SE, BETWEEN PACIFIC BOULEVARD AND 4TH AVENUE, IN ALBANY, OREGON; ADOPTING FINDINGS; AND DECLARING AN EMERGENCY.

WHEREAS, on December 15, 2004, the City of Albany City Council directed staff to initiate the vacation of this portion of right-of-way (File VC-01-07); and

WHEREAS, notices of public hearings were mailed, posted, and published as required by state and local law; and

WHEREAS, the Albany Hearings Board held a public hearing on October 11, 2007, and recommended that the City Council approve the proposed vacation of the aforementioned right-of-way; and

WHEREAS, the Albany City Council held a public hearing on October 24, 2007.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Subject Property. The portion of Davidson Street SE (see legal description on attached Exhibit A and map labeled Exhibit B) is hereby vacated.

Section 2: Findings. The Findings, Conclusions, and Conditions in the Staff Report attached as Exhibit C are hereby adopted in support of this decision.

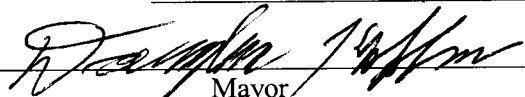
Section 3: Easement Retained. The City retains a public utility easement over the entire area being vacated. The easement will benefit the City, as well as franchise utilities, their successors, assigns, authorized agents, and/or contractors.

Section 4: Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of this city of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council.

Passed by Council: October 24, 2007

Approved by Mayor: October 24, 2007

Effective Date: October 24, 2007



Mayor

ATTEST:



City Clerk

EXHIBIT A

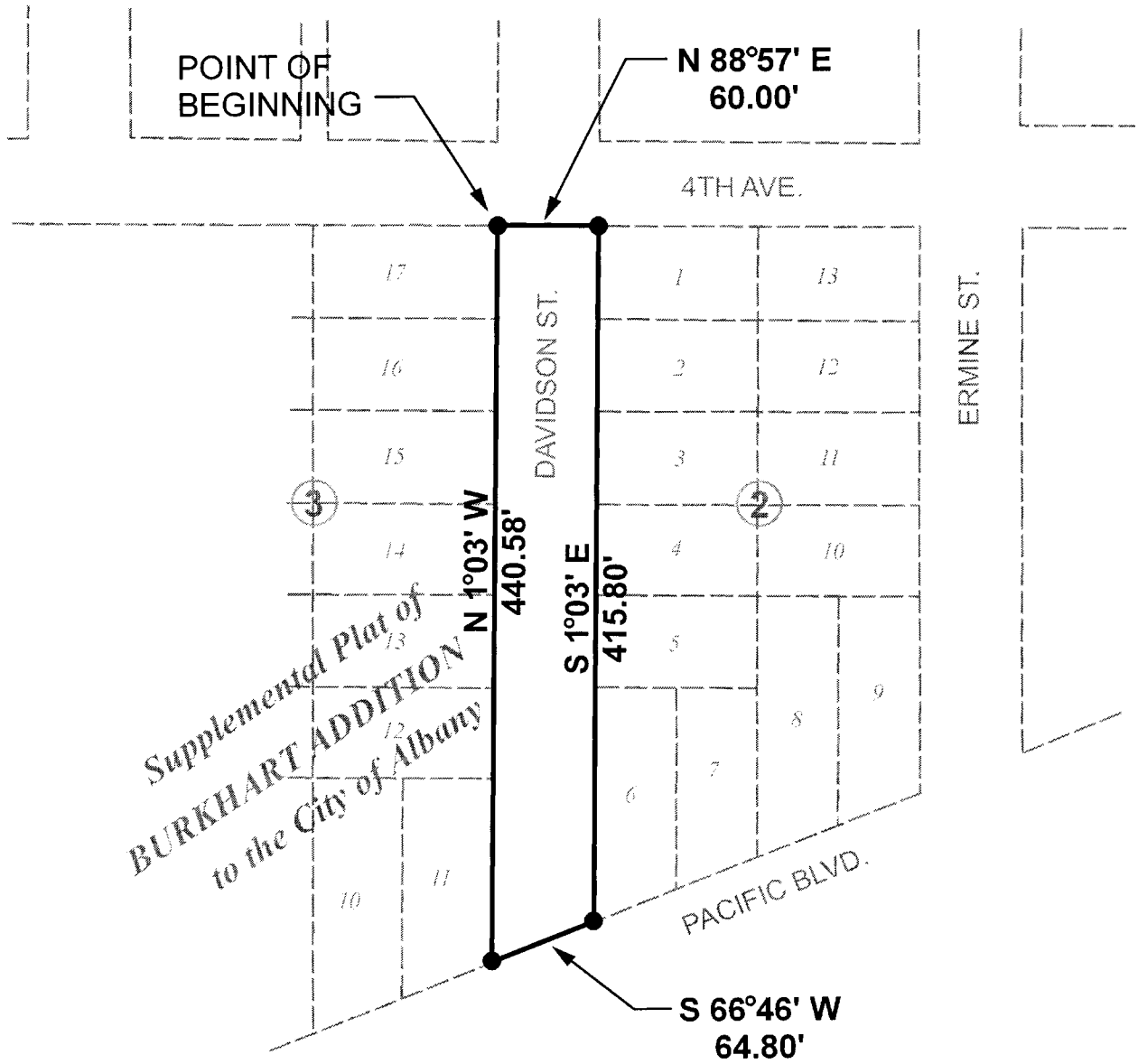
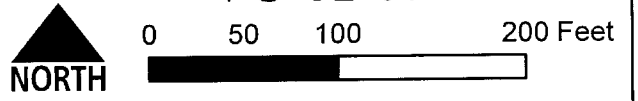
Right-of-Way Vacation VC-01-07

Beginning at the Northeast corner of Lot 17, located in Block 3, Supplemental Plat of Burkhart Addition to the City of Albany, Oregon, Linn County Survey 1361-B; thence North $88^{\circ} 57'$ East, 60.00 feet along the south line of 4th Avenue to the Northwest corner of Lot 1, Block 2 of said Burkhart Addition; thence South $1^{\circ} 03'$ East, 415.80 feet to the north line of State Highway 99E (Pacific Boulevard), said point also described as the southwest corner of Lot 6, Block 2 of said Burkhart Addition; thence South $66^{\circ} 46'$ West, 64.80 feet along the north line of said State Highway 99E to the southeast corner of Lot 11, Block 3 of said Burkhart Addition; thence North $1^{\circ} 03'$ West 440.58 feet to the Point of Beginning.

This area being vacated contains 25,691.4 square feet (0.59 acres) of land, more or less.

Bearings based on County Survey No. 4341 filed on May 11, 1953, Linn County, Oregon.

EXHIBIT B
Legal Description Map
VC-01-07





Community Development Department

333 Broadalbin Street SW, P.O. Box 490, Albany, OR 97321

Phone: (541) 917-7550 Facsimile: (541) 917-7598

STAFF REPORT

Vacation (Public Street Right-of-Way)

HEARING BODIES

CITY COUNCIL

HEARING DATES

Wednesday, October 24, 2007

HEARING TIMES

7:15 p.m.

HEARING LOCATION

Council Chambers, Albany City Hall, 333 Broadalbin Street SW

GENERAL INFORMATION

DATE OF REPORT:

October 17, 2007

FILE:

VC-01-07

TYPE OF APPLICATION:

Vacation of a portion of Davidson Street SE right-of-way.

REVIEW BODIES:

Hearings Board and City Council

APPLICANT:

The Albany City Council initiated this vacation at the request of the Greater Albany Public School District.

ADDRESS/LOCATION:

Davidson Street SE, between Pacific Boulevard and 4th Avenue (see Staff Report Attachment A)

MAP/TAX LOT:

Street right-of-way and adjacent properties are shown on Linn County Assessor's Map No. 11S-03W-5DC

ZONING:

Adjacent zoning is Community Commercial (CC) on the east, and Residential Single Family (RS-6.5) on the west. The vacated area would be zoned CC and RS-6.5 (see Staff Report Attachment B)

TOTAL LAND AREA:

25,691.4 square feet (0.59 acres)

EXISTING LAND USE:

Public right-of-way (unimproved); southern portion being used for display parking at an auto sales lot; northern portion being used as play area for Waverly Elementary School.

NEIGHBORHOOD:

Willamette

SURROUNDING ZONING:

North and West: RS-6.5 (Residential Single Family)
South and East: CC (Community Commercial)

SURROUNDING USES:

North: Single-family homes (across 4th Avenue SE)
South: Commercial development (across Pacific Boulevard SE)
East: Auto sales and apartments
West: Waverly Elementary School

NOTICE INFORMATION

A notice of public hearing was mailed to surrounding property owners on September 28, 2007. The site was posted on September 25, 2007, in accordance with Section 1.410 of the Albany Development Code. Two legal notices have been or will be published in the *Albany Democrat-Herald* on September 27, and October 4, in accordance with Oregon Revised Statute (ORS) 271.110. At the time this staff report was prepared (October 17, 2007), the Albany Planning Department had received no written comments.

HEARINGS BOARD RECOMMENDATION

The Albany Hearings Board held a public hearing on this case on October 11, 2007, and recommended APPROVAL WITH CONDITIONS of this Vacation application for a portion of the Davidson Street SE right-of-way, between Pacific Boulevard SE and 4th Avenue SE (File VC-01-07). The proposed conditions are found in this staff report.

CITY COUNCIL DECISION

MOTION TO APPROVE

If no new evidence is presented at the public hearing, the City Council may approve the application based on the findings and conclusions of the staff report.

I MOVE that the City Council APPROVE WITH CONDITIONS the application that would result in the vacation of a portion of the Davidson Street SE right-of-way, between Pacific Boulevard SE and 4th Avenue SE (File VC-01-07). This motion is based on the findings and conclusions of the staff report and testimony presented at the public hearing.

MOTION TO DENY

If the City Council determines that there is insufficient evidence to demonstrate that the review criteria have been met, the City Council may decide that the application be denied.

I MOVE that the City Council DENY the application for the vacation of a portion of the Davidson Street SE right-of-way, between Pacific Boulevard SE and 4th Avenue SE (File VC-01-07). I also MOVE that the City Council direct staff to prepare findings to support denial based on the testimony presented at the public hearing and to present these findings for consideration at the next meeting.

STAFF ANALYSIS

Vacation File VC-01-07

The Albany Development Code (ADC) contains the following review criteria which must be met for this application to be approved. Code criteria are written in ***bold italics*** and are followed by findings, conclusions, and conditions, where conditions are necessary to meet the review criteria.

OVERVIEW

This portion of Davidson Street SE is a 430-foot-long unimproved public right-of-way. The southern half of this section of right-of-way is currently being used as part of an auto sales lot under a lease agreement by the City. It is paved and landscaped, but no structures exist within this area. The northern half is being used by the school district. Pathways and playground equipment have been located within this area and a small shed lies within the right-of-way. The Greater Albany Public School (GAPS) District wishes to have the right-of-way vacated so that they can sell a portion of the resulting property.

Criterion (1): The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan, city transportation or public facility plan.

FINDINGS OF FACT

1.1 The following Comprehensive Plan policies have been identified as relevant to this review criterion:

GOAL 11: Public Facilities and Services

- a. Prohibit the construction of structures over public water lines and easements.
- b. Prohibit the construction of structures over drainage improvements and easements.
- c. Prohibit the construction of structures over public wastewater lines and easements.

1.2 Sanitary Sewer. Sanitary sewer utility maps indicate that a 54-inch public sanitary sewer main lies within the Davidson Street SE right-of-way proposed for vacation. This interceptor main is approximately 25 feet deep.

1.3 Water. Water utility maps indicate that no public water facilities lie within the area proposed for vacation. A 10-inch public water main runs along the north side of Pacific Boulevard SE.

1.4 Storm Drainage. Storm drainage utility maps indicate that no piped public storm drainage facilities exist within this portion of Davidson Street SE. A 12-inch public storm drain main lies in 4th Avenue SE, and an 18-inch main runs along the north side of Pacific Boulevard SE.

1.5 Other Utilities. City staff has contacted the various other utility providers about this proposed right-of-way vacation. Based on information gathered from these private utilities, applicant submittals, and other as-built drawings, it has been determined that there are other utilities (such as natural gas, phone, etc.) within the area to be vacated.

1.6 Transportation. This street (if it existed) would be classified as a local street and is not represented on any City transportation plan.

CONCLUSION

1.1 There is a 25-foot-deep, 54-inch diameter public sanitary sewer main within the Davidson Street SE right-of-way proposed for vacation. Because of the size and depth of this main, staff recommends that a public utility easement be maintained over the entire area proposed for vacation (see Staff Report Attachment C). This easement would provide access rights to the City and other utility companies and would prohibit the construction of any permanent structures within this area.

CONDITION

1.1 The City will retain a public utility easement over the entire area proposed for vacation. This easement will allow legal access to the area for maintenance of any existing utilities and would prohibit the construction of any permanent structures within this easement.

Criterion (2): The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.

FINDINGS OF FACT

2.1 The area proposed for vacation is a section of Davidson Street SE right-of-way, north of Pacific Boulevard

SE and south of 4th Avenue SE. This portion of Davidson Street SE is a 430-foot-long unimproved public right-of-way.

- 2.2 The City's Transportation System Plan (TSP) does not show the need for future improvement of this section of Davidson Street SE.
- 2.3 There are no undeveloped properties adjacent to this portion of right-of-way, so a future street is not needed for access to adjacent parcels.
- 2.4 Pacific Boulevard SE and 4th Avenue SE are both accessible via Columbus Street SE to the west of Davidson Street SE, and Ermine Street SE to the east of Davidson Street SE.
- 2.5 There are public utilities within this portion of right-of-way (see Findings under Criterion 1). In order to maintain access to these utilities, a public utility easement will be kept over the entire vacated area.

CONCLUSIONS

- 2.1 The proposed vacation will not have a negative impact on the traffic circulation in this area.
- 2.2 The area proposed for vacation is not needed for connectivity between public rights-of-way. The area proposed for vacation is currently not used for vehicle traffic.
- 2.3 A public utility easement should be maintained over the entire area proposed for vacation to allow access to the various utilities within this area.

CONDITION

- 2.1 See Condition 1.1.

(3) *The requested vacation will not have a negative effect on traffic circulation or emergency service protection.*

FINDINGS OF FACT

- 3.1 The area proposed for vacation is not currently open to traffic as it is an unimproved right-of-way.
- 3.2 Each of the three parcels adjacent to this right-of-way has frontage on at least two other public streets that are improved for vehicle traffic.
- 3.3 Emergency services vehicles have access to each of the adjoining developments from existing accesses off of other improved public streets.

CONCLUSIONS

- 3.1 The vacation of this unimproved right-of-way will have no adverse impact on traffic circulation in this area. Each of the adjacent uses has existing accesses from other improved public streets.
 - 3.2 This review criterion is met.
- (4) *The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.***

FINDINGS OF FACT

- 4.1 The right-of-way to be vacated will be incorporated into the parcels directly abutting it, or revert back to the owner of the property from which the right-of-way was dedicated. Title to the area to be vacated would be distributed as shown on Staff Report Attachment D.
- 4.2 The area to be vacated is currently being used by adjacent property owners for purposes other than as a public street. No vehicle access points currently exist within this area.
- 4.3 The area proposed for vacation would not become part of the adjacent properties “front yard” setback, and therefore would not require additional landscaping, etc.

CONCLUSIONS

- 4.1 No additional landscaping or access reconstruction will be necessary if the area is vacated.
- 4.2 This review criterion is met.

(5) *The public interest, present and future, will be best served by approval of the proposed vacation.*

FINDINGS

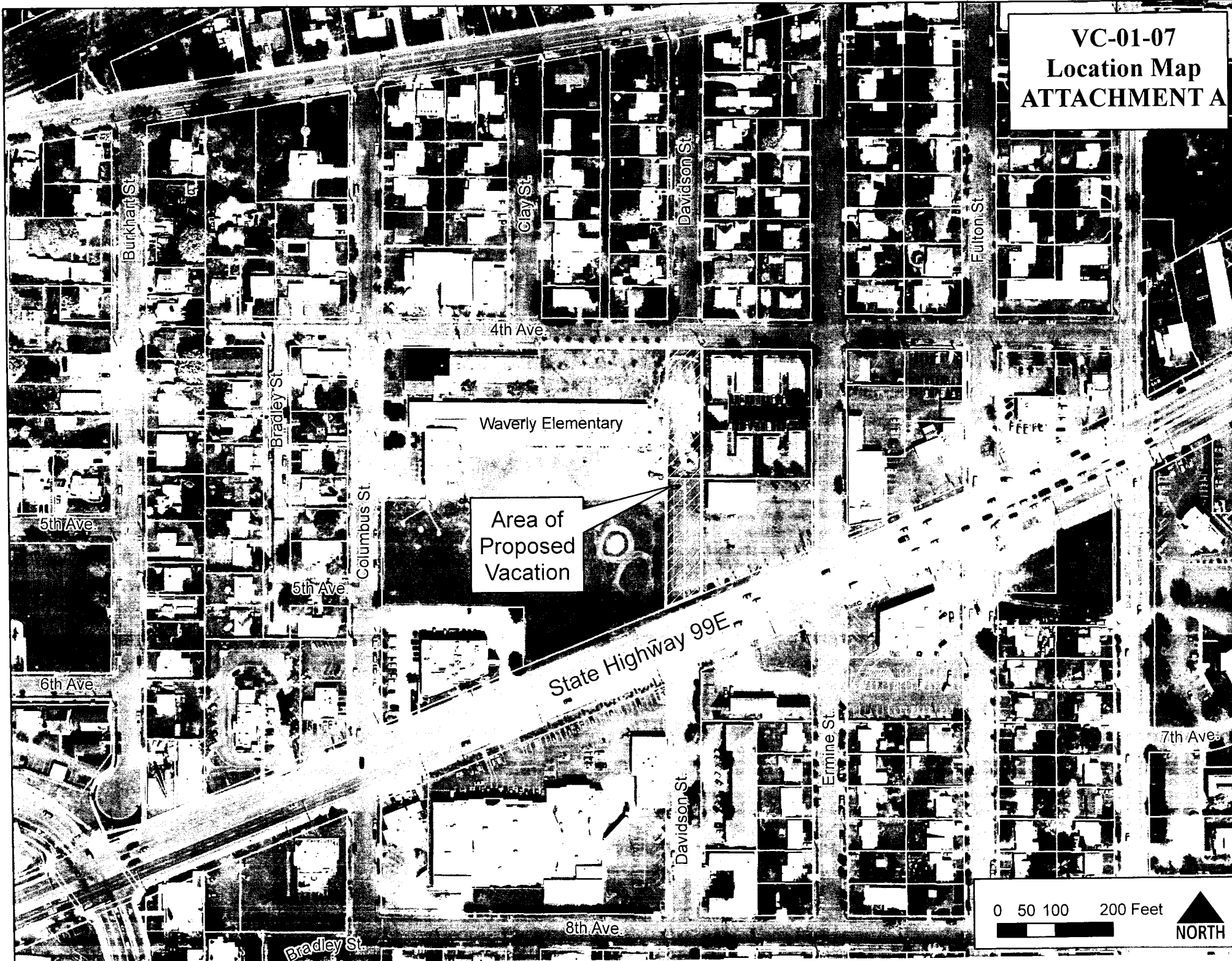
- 5.1 The area proposed for vacation is an unimproved right-of-way. The area to be vacated is currently being used and maintained by adjacent property owners for purposes other than a public street.
- 5.2 Maintaining a public utility easement over the area to be vacated will provide the City and other utility companies the right to access the utilities within the area.
- 5.3 The City Council initiated this vacation at the request of the Greater Albany Public School District.

CONCLUSIONS

- 5.1 Vacating the proposed area will not adversely impact the City.
- 5.2 This review criterion is met.

U:\Community Development\Planning\Current\2007\07vc01 ordinance.doc

**VC-01-07
Location Map
ATTACHMENT A**



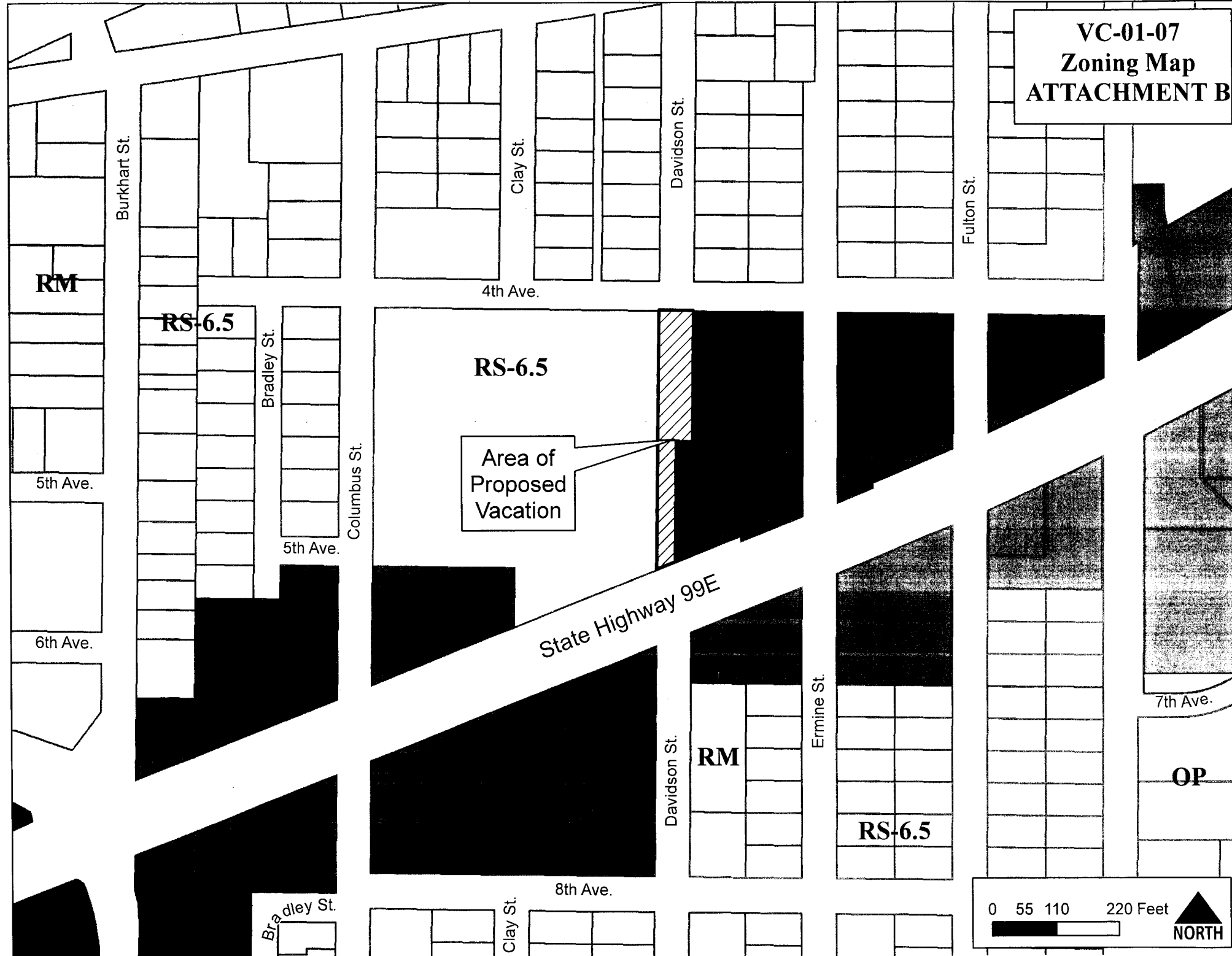
Waverly Elementary

Area of
Proposed
Vacation

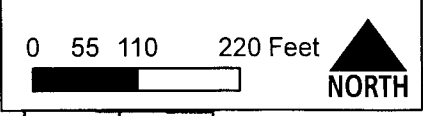
0 50 100 200 Feet



**VC-01-07
Zoning Map
ATTACHMENT B**



Area of
Proposed
Vacation



VC-01-07
Utility Map
ATTACHMENT C

DAVIDSON ST.

4TH AVE.

ERMINE ST.

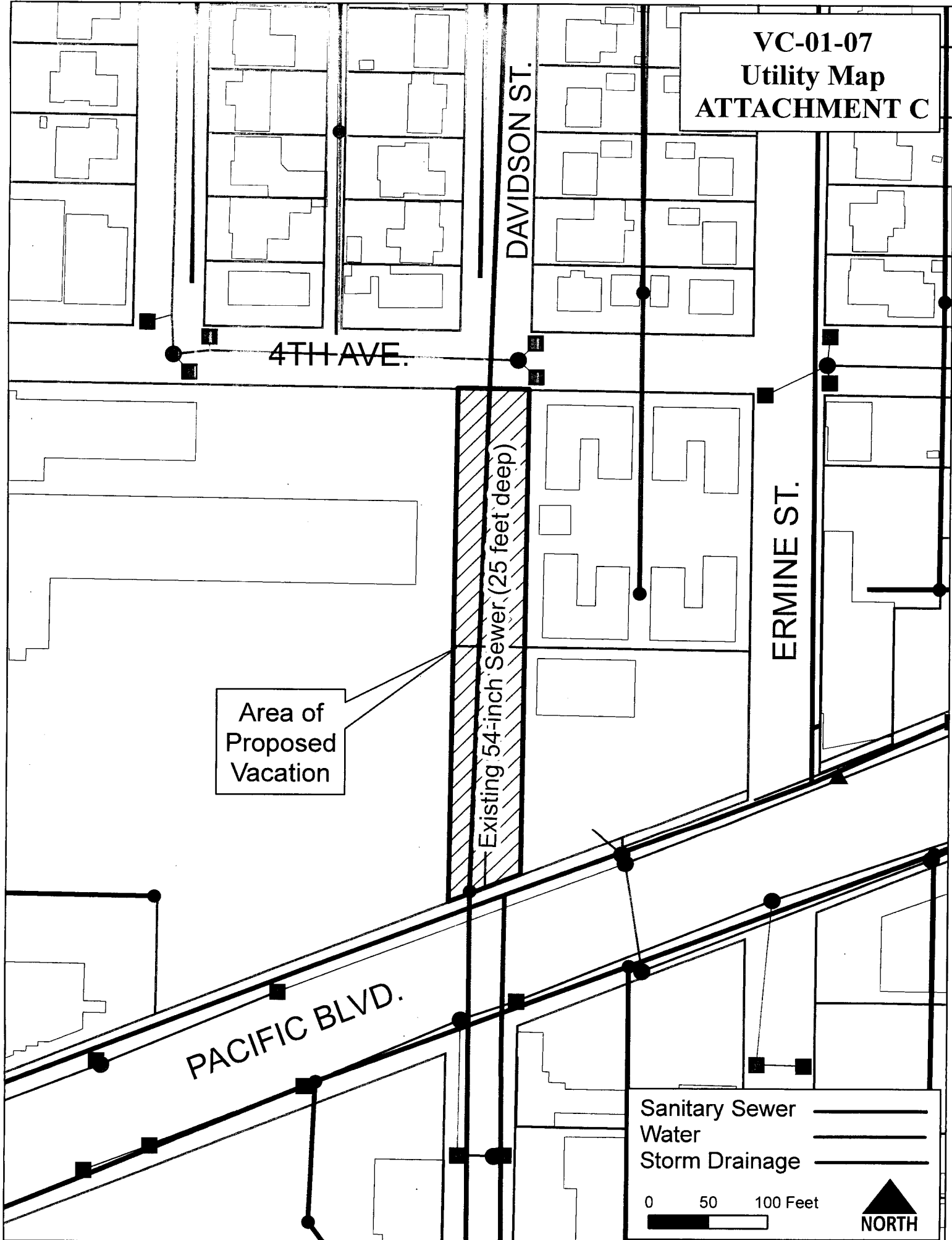
Area of
Proposed
Vacation

Existing 54-inch Sewer (25 feet deep)

PACIFIC BLVD.

Sanitary Sewer
Water
Storm Drainage

0 50 100 Feet



**VC-01-07
Property Transfer Map
ATTACHMENT D**

Clay St.

Davidson St.

4th Ave.

Ermine St.

Tax Lot
8300

Tax Lot
8200

Goeco Inc.

Greater Albany
Public School
District

Tax Lot
8201

Fred
and Linda
Dunmire

State Highway 99E

0 20 40 80 Feet

