



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

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AGENDA STAFF REPORT
CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 22, 2014	Action Item	

TO: Mayor and City Council

FROM: Nolan K. Young, City Manager *ny*

DATE: September

ISSUE: Encroachment permit at the intersection of Third Street, Fourth Street and Third Place

BACKGROUND: Attached is a news report from The Chronicle regarding an issue regarding the placement of political signs at intersection of Third Street, Fourth Street and Third Place. See attached map. This intersection is adjacent to property owned by Triple W Properties (Wally Wolf). Dr. Wolf has maintained this section of right of way, including landscaping, a bench and sprinkler system for years. He has also allowed the placement of political signs adjacent to his business in this public right of way. In 2012, an issue arose regarding his desire to not allow public signs next to his business that represented positions he did not want to be associated with. City staff believed at the time all property owners had the right to restrict the placement of political signs adjacent to their property within the public right of way. The Land Use Development Ordinance (LUDO) prohibits the placement of political signs in the public right of way. We have allowed this at a few locations where it does not infringe on the rights of adjacent property owners.

In order to formalize the ability of Dr. Wolf to not allow certain signs adjacent to his property in the public right of way, we entered into an encroachment permit (attached). The validity of that permit has now been questioned by a group supporting the marijuana initiative.

Sandy Burbank, a supporter of this initiative, has asked the City Manager to revoke the encroachment permit. I chose not to do so. As with any decision by the City Manager,

who typically approves right of way encroachment permits, the approval is appealable to the City Council. Ms. Burbank is appealing that decision to the Council and is requesting the Council void this encroachment permit to allow anyone to place signs at this intersection.

City Attorney Gene Parker is doing additional research on this issue, which was originally researched in 2013, just to make sure there isn't a reason the encroachment permit is inappropriate. He will give his findings at the Council meeting.

COUNCIL ALTERNATIVES:

1. Staff Recommendation: Uphold the City Manager's authorization of the encroachment permit with Dr. Wolf.
2. Direct staff to void that portion of the encroachment related to signs and enforces the LUDO provision that prohibits signs in the right of way at this location.
3. Direct the City Manager to void the encroachment permit and allow anyone to place political signs at this location.



Breaking News Rollover MVA north of Thompson Park September 19, 2014

Birds die after powder spill September 19, 2014

Tussle over pro-pot signs

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As of Thursday, September 18, 2014

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A marijuana initiative is once again on the Oregon ballot and, once again, it has caused a ruckus over political signs and just who owns what, at the pie-shaped corner of West Fourth and West Third streets.

In 2012, Curt Wagoner said 10 signs he placed at the publicly owned corner in support of a marijuana legalization measure were stolen, sometimes just 15 minutes after they were put up.

Dr. Dan Davidson, a veterinarian at The Dalles Veterinary Hospital adjacent to the corner, said he had, indeed, removed the signs. He said that action was taken because he believed the slice of property was privately owned and his to control.

He didn't want his business associated in any way with the marijuana initiative, so he took them down.

After Wagoner saw Davidson remove a sign, a police officer brokered a deal where Davidson paid a hopping-mad Wagoner \$40 to cover the cost of the signs.

"That was kind of an eye opener," Davidson said of the flap and his realization it was public property. "I'm sorry all that happened. I wish nobody was putting signs up there, to tell you the truth. But people want to."

With the latest marijuana legalization initiative, Measure 91, Wagoner was back bright and early on Sept. 5, the first day that political signs were allowed, putting in another sign at the corner.

When the sign was again removed and he complained to city hall, he learned the city had reached an agreement last year with the owner of the veterinary hospital property, Dr. Wally Wolf.

That agreement gives Wolf control over what signs are permitted in the wedge of public right of way at the corner.

Public right of way is land dedicated by private property owners for public use, be it for roads, sidewalks, etc. The agreement with Wolf stipulates that the city can use the land if needed for public improvements.

Wolf said of Wagoner, "It's no different if I put an anti-marijuana sign in his yard...That's my stand on this thing. Fair is fair."

Wagoner wants the agreement revoked and the corner in question turned into "a free speech zone. That was our spot. Everyone in town looks for signs there because that's where everybody puts signs."

As for the agreement, The Dalles City Manager Nolan Young, who signed it, said, "I don't see any reason to take and modify that policy, since it's accomplishing what we had intended.

"Mr. Wolf wanted the same rights that all the rest of us have, to control what message is being supported in front of his property," Young said.

Because of the location of that particular right of way, "there were those that did not feel he had that right," Young said. "We entered into the formal agreement just so it was clear that he had the same rights as other individuals have."

Davidson said, "Both sides of an issue can be put up, but we might be choosing issues. But that's the only one at this point," he said of the marijuana issue. "That's a little too controversial."

After removing the pro-pot sign, the veterinary hospital "put up a sign that said, think about what you're voting for. Think of the future. Just a nice sign, and somebody stole that," Davidson said.

Sandee Burbank, part of the Yes on 91 group, said her group didn't steal the sign.

When their sign was taken down, and was laid down on the ground, a note was written on the back saying the land was private property. "That's not true," Burbank said.

The note writer left a name and number. The Chronicle called it, but got no return call by press time.

There's even a dispute over who owns posts driven into the ground to hold signs. Earlier this month, a laminated sign was draped over the posts, saying they were "property of the Republican party to use as they see fit."

That sign is now gone, and in its place is a much smaller sign on the tree there that reads "Permission required to post signs on this property."

Wagoner said one of the posts the Republicans claimed is actually his. He got so tired of having signs stolen last time that he set a post in the ground so deep he couldn't remove it at the end of the political season. "We call it Excalibur."

Wagoner said a bunch of Obama signs were taken down in 2012 also, to the point where the person placing the signs finally got them for free from the Democratic Party. Davidson said those signs were removed because the person didn't ask permission.

Burbank is livid about the inability to post signs at the corner now and said, "this is war."

In an email to the Chronicle, City Attorney Gene Parker said, "It was not the intent of the agreement that only a certain political party could control the placement of signs in this portion of public-right-of-way."

He said he would do further research on the matter.

Wolf said, "We weren't out to start a war, but I did think we deserved a bit of say in what was stuck outside our building."

"I thought it was going to be a real simple procedure to make the place look decent and try to keep it that way," he said.

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COPY



After recording, return to:
City Clerk
313 Court Street
The Dalles, OR 97058

Linda Brown, County Clerk for Wasco County,
Oregon, certify that the instrument identified
herein was recorded in the Clerk records.



ENCROACHMENT AGREEMENT

WHEREAS, Triple W Properties, LLC, hereinafter referred to as "Owner", is the owner of a parcel of property located at 408 West Third, which is identified as Assessor's Map No. 1N 13E 4AA Tax Lot 3000, which property is further described in Exhibit "A", which is attached hereto and incorporated herein by this reference; and

WHEREAS, directly adjacent to the east of the above-described parcel of property is a portion of public right-of-way, which portion of public right-of-way is shown in the diagonally marked area on the map attached hereto as Exhibit "B", which is attached hereto and incorporated herein by this reference; and

WHEREAS, for several years Owner has maintained the existing ground and landscaping located in the public right-of-way, and has made certain improvements to this portion of public right-of-way including the installation of a bench and an underground irrigation system; and

WHEREAS, the subject portion of public right-of-way has traditionally been used for the placement of signs advertising community events, and for the placement of political campaign signs related to candidates and ballot measures; and

WHEREAS, decisions concerning which signs have been allowed to be placed in the public right-of-way have effectively been made by the Owner; and

WHEREAS, Section 4 of General Ordinance No. 97-1217 provides that no person may occupy or encroach on a public right-of-way without the City's permission; and

WHEREAS, Owner and the City have been engaged in negotiations concerning the terms and conditions of an encroachment agreement which would allow the Owner to continue maintain the existing improvements in the portion of right-of-way shown in Exhibit "B", and to make other improvements to said right-of-way, and to formalize the Owner's authority to control the placement of signs in this portion of public right-of-way;

WHEREAS, the City and the Owner have agreed upon the provisions necessary for the approval of an encroachment agreement as outlined above;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The City of The Dalles hereby authorizes the Owner to encroach upon the portion of the right-of-way shown in Exhibit "B" adjacent to the property located at 408 West Third Street. This permission authorizes the continued placement of the existing landscaping, and bench, and irrigation system which have been installed upon the portion of right-of-way shown in Exhibit "B". This permission also authorizes the Owner to install a hard surface upon the right-of-way, subject to the City's approval of the type of material to be used for the hard surface, which approval shall not be unreasonably withheld. Owner shall be responsible for all costs of maintenance of the existing improvements, and for all costs associated with the installation of the hard surface material.
2. Pursuant to the provisions of Section 4 of General Ordinance No. 97-1217, the City hereby delegates the authority to Owner to control the placement of signs in the designated portion of public right-of-way shown in Exhibit "B".
3. Owner understands and agrees that in the event the City determines that the needs of the City's transportation system required that the existing improvements, and any future improvements constructed upon the designated portion of right-of-way shown in Exhibit "B", including but not limited to a hard surface material, need to

be removed to allow for public improvements to be made to the right-of-way, the City shall have the right to demand the Owner, or its heirs, successors, or assigns, to remove said improvements, and in the event the Owner, its heirs, successors, or assigns fail to do so, the City shall have the option to pursue appropriate legal remedies to require Owner, its heirs, successors, or assigns to remove said improvements authorized by this encroachment agreement.

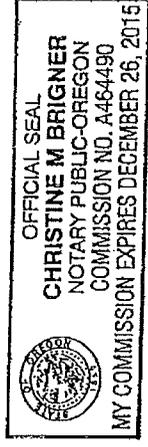
3. The covenants described in this Agreement shall run with the real property described herein, and shall inure to and be binding upon the parties hereto, their heirs, successors, and assigns. This Agreement shall be recorded with the Wasco County Clerk at the City's expense.

Dated this 5th day of April, 2013.

OWNER

Wallace W. Wolf
Wallace W. Wolf, Member

State of Oregon)
) ss.
County of Wasco)



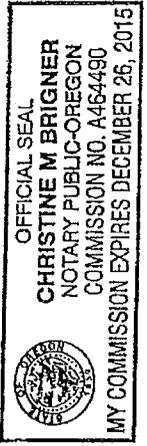
CITY OF THE DALLES

Nolan K. Young
Nolan K. Young, City Manager

The foregoing instrument was acknowledged before me this 5th day of April 2013 by Wallace W. Wolf, acting as a member on behalf of Triple W. Properties, LLC, to be his voluntary act and deed.

Christine Brigner
Notary Public for Oregon
My commission expires: 12/26/2015

State of Oregon)
) ss.
County of Wasco)



The foregoing instrument was acknowledged before me this 12th day of April, 2013 by Nolan K. Young, City Manager for the City of The Dalles, to be his voluntary act and deed.

Christine M. Brigner
Notary Public for Oregon
My commission expires: 12/26/2015

EXHIBIT "A"

PARCEL 1: Lot 1, Block 8 of the EXTENSION TO TREVITT'S ADDITION to Dalles City, Wasco County, Oregon.

ALSO: Beginning at the Southeast corner of Lot 1, Block 8 of the EXTENSION OF TREVITT'S ADDITION to Dalles City, Wasco County, Oregon; thence South 55 degrees 59' East 15 feet; thence North 34 degrees 11' East to the South line of Third Street; thence South 34 degrees 11' West to the place of beginning.

ALSO: Beginning at the Southeast corner of Lot 2, Block 8 of the Extensions of Trevitt's Addition; thence Northerly along the East line of Lot 2, 28.72 feet; thence Westerly on a line parallel to the South boundary line of Lot 2, 13.1 feet; thence Southerly on a line parallel to the East line of Lot 2, 28.72 feet; thence Easterly along the South line of Lot 2, to the point of beginning.

PARCEL 2: Lots 2, 3, and the East 10 feet of Lot 4, Block 8 of the EXTENSION OF TREVITT'S ADDITION to Dalles City, Wasco County, Oregon.

EXCEPTING THEREFROM that portion of Lot 2, described as follows: Beginning at the Southeast corner of Lot 2, Block 8 of the extension of Trevitt's Addition; thence Northerly along the East line of Lot 2, 28.72 feet; thence Westerly on a line parallel to the South boundary line of Lot 2, 13.1 feet; thence Southerly on a line parallel to the East line of Lot 2, 28.72 feet; thence Easterly along the South line of Lot 2, to the point of beginning.

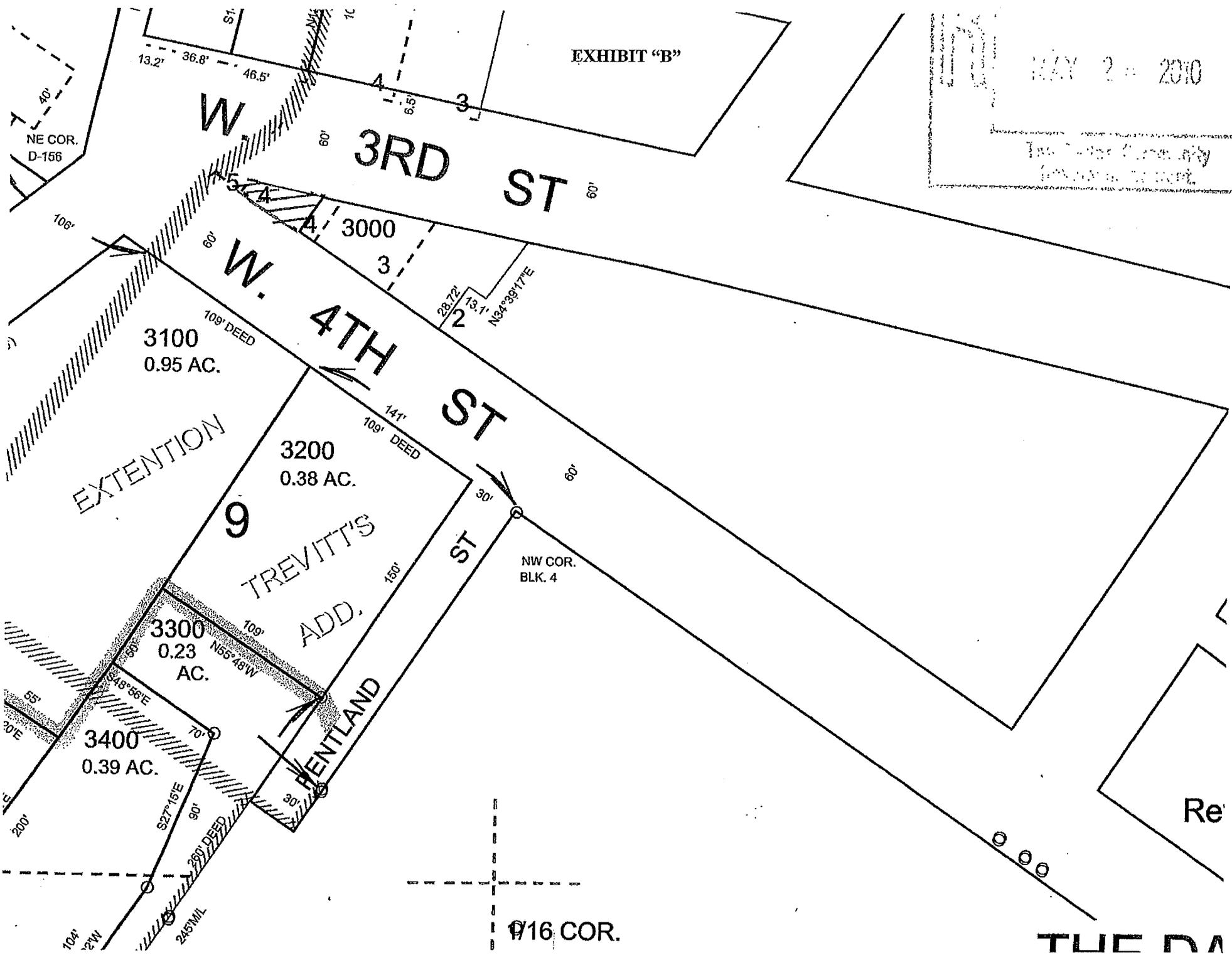
SUBJECT TO:

1. Easements for public utilities in vacated street area and the conditions imposed thereby.
2. Existing rights of way for road, highways, irrigation ditches, canals, and pole lines.

EXHIBIT "B"

MAY 2 - 2010

The City of...
Government



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THE DA