



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour
County Counsel

August 17, 2023

BCC Agenda Item: _____

Board of County Commissioners
Clackamas County

Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

Members of the Board:

Approval of Annexation to Clackamas County Service District No. 1

Previous Board Action/Review	None		
Performance Clackamas	Build Public Trust Through Good Government		
Counsel Review	Initials: JM	Procurement Review	No
Contact Person	Jeffrey D. Munns	Contact Phone	503-742-5984

BACKGROUND

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. 2023-003 is a proposed annexation to Clackamas County Service District No. 1 ("District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting a notice near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Notice posted online (<https://www.clackamas.us/meetings/bcc/business>); 3) Published notice twice in the Clackamas County Review; 4) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is in the southern portion of Happy Valley and consists of one tax lot that is improved with a church and a single-family residence. The territory contains 1.15 acres, and is assessed at \$17,878.00.

REASON FOR ANNEXATION

The property owner desires sewer service to serve an existing church and a single family residence. The property has been annexed to the City of Happy Valley.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider sewage treatment and transmission for the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County, Clackamas County Service District # 1, and Tri-City County Service District to create Water Environment Services, an ORS 190 partnership ("WES") as a collective service provider for all three districts. If annexed into the District, the property will receive sewerage treatment and transmission from WES under such agreement. Local sewerage collection will continue to be provided by the City.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. The territory, if annexed into the District, will be served (major transmission and treatment) by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the Tri-City County Service District with Clackamas County Service District No. 1 and the Surface Water Management Agency of Clackamas County, as amended from time to time.

RECOMMENDATION

Based on the attached Order and Findings, Staff recommends approval of Proposal No. 2023-003, annexation to Clackamas County Service District No. 1.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving a
Boundary Change Proposal
No. 2023-003

} Order No. _____

This matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1;

It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

It further appearing that this matter came before the Board for public hearing on August 17, 2023 and that a decision of approval was made on August 17, 2023;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. 2023-003 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of August 17, 2023.

ADOPTED this 17th day of August, 2023.

BOARD OF COUNTY COMMISSIONERS

Tootie Smith, Chair

Anthony Mayernik, Recording Secretary

FINDINGS

Based on the study and the public hearing the Board found:

1. Proposal No. 2023-003 is a proposed annexation to Clackamas County Service District No. 1 (“District”).
2. If the Board approves the proposal the boundary change will become effective immediately.
3. The territory to be annexed is in the southern portion of Happy Valley and consists of one tax lot that is improved with a church and a single-family residence. The territory contains 1.15 acres, and is valued at \$17,878.00.
4. The property owner desires sewer service from the District to following annexation into the City of Happy Valley. The property owners confirm they have checked with the County and that connection is allowed to the property.
5. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted in Finding 2 above.

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the Finding 7 below. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District.

6. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

7. The PUBLIC FACILITIES AND SERVICES Element of the County Comprehensive Plan contains the following Goal:

Sanitary Sewage Treatment Policies

* * *

- 7.A.8 Prohibit new on-site sewage disposal systems within Urban Growth Boundaries except for:
 - 7.A.8.1 A lot of record outside of a sewage service district, legally recorded prior to January 31, 1980; or
 - 7.A.8.2 Parcels of ten acres or larger in Future Urban areas inside the Metro Urban Growth Boundary (UGB); or
 - 7.A.8.3 Outside the Metro UGB on lots that conform to the minimum lot size of the zone; or
 - 7.A.8.4 Parcels inside a sewage service district having unique topographic or other natural features that make sewer extension impractical as determined on a case by case basis by the sewer service provider.

8. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these

agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.

9. The District has a sewer line available and located on the property which can serve the property.
10. The property is already in Sunrise Water Authority's service district area and has water service.
11. The area receives police service from the County Sheriff.
12. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the District.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 5 & 8 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The area is served by the District and no other entity has the capability of serving this site.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (Clackamas County's Comprehensive Plan) and concludes this proposal complies with it. All other necessary urban services can be made available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District has service available to the area to be annexed as noted in Finding No. 9. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.

- a. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.

Exhibit B: Legal Description

KNOW ALL MEN BY THESE PRESENTS, That Carver Conservative Baptist Church of Carver, Oregon, a corporation duly organized and existing under the laws of the State of Oregon, in consideration of Ten and no/100-----Dollars, to it paid by Lower Columbia Sunday School Fellowship, a corporation does hereby grant, bargain, sell and convey to said grantee, its successors, heirs and assigns, all the following real property, with the tenements, hereditaments and appurtenances situated in the County of Clackamas, and State of Oregon, bounded and described as follows, to-wit:

Lots 6, 7, 8 and 9, Block 1, FIRST ADDITION TO CARVER, in the County of Clackamas and State of Oregon

Rec'd 3-9-2023
 Prelim. Desc. is Ok
 4-7-23_EB

To Have and to Hold the above described and granted premises unto the said grantee, its successors, heirs and assigns forever. And the grantor does covenant that it is lawfully seized in fee simple of the above granted premises free from all incumbrances,

and that it will and its successors shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

Done by order of the Board of Trustees, with the seal of said corporation, this _____ day of October, 1965.

CARVER CONSERVATIVE BAPTIST CHURCH OF CARVER, OREGON
 By Ezekiel Williams TRUSTEE President

By George Bartling TRUSTEE Secretary

On this _____ day of October, 19 65,

STATE OF OREGON, } ss.
 County of Clackamas }
 before me appeared Ezekiel Williams
 George Bartling

both to me personally known, who being duly sworn, did say that he the said Ezekiel Williams is the Trustee President, and he the said George Bartling is the Trustee Secretary of Carver Conservative Baptist Church of Carver, Oregon, the within named Corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and that the said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Trustees and Ezekiel Williams and George Bartling

acknowledged said instrument to be the free act and deed of said Corporation. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Marion V. Lohrerfahl
 Notary Public for Oregon.
 My Commission expires March 23, 1969



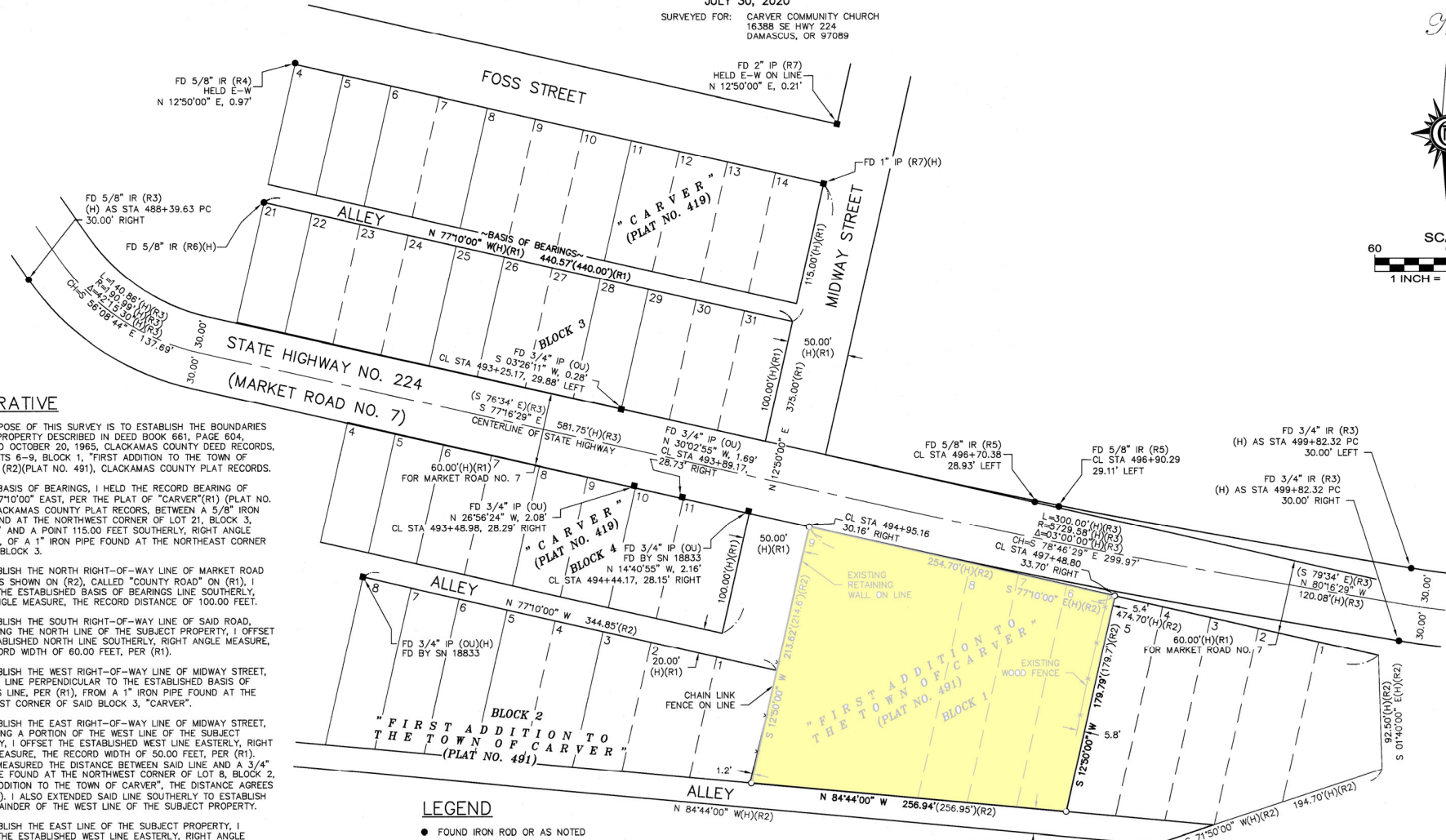
RECORD OF SURVEY

TOWN
 LOTS 6-9, "FIRST ADDITION TO THE CITY OF CARVER" (PLAT NO. 491)
 LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 18,
 TOWNSHIP 2 SOUTH, RANGE 3 EAST, OF THE WILLAMETTE MERIDIAN,
 CLACKAMAS COUNTY, OREGON

CLACKAMAS COUNTY SURVEYOR
 DATE RECEIVED: 7-20-2020
 DATE ACCEPTED/FILED: 8-5-20
 SURVEY NUMBER: SN2020-136

JULY 30, 2020

SURVEYED FOR: CARVER COMMUNITY CHURCH
 16388 SE HWY 224
 DAMASCUS, OR 97089



NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO ESTABLISH THE BOUNDARIES OF THE PROPERTY DESCRIBED IN DEED BOOK 661, PAGE 604, RECORDED OCTOBER 20, 1965, CLACKAMAS COUNTY DEED RECORDS, BEING LOTS 6-9, BLOCK 1, "FIRST ADDITION TO THE TOWN OF CARVER" (R2)(PLAT NO. 491), CLACKAMAS COUNTY PLAT RECORDS.

AS THE BASIS OF BEARINGS, I HELD THE RECORD BEARING OF SOUTH 77°10'00" EAST, PER THE PLAT OF "CARVER"(R1) (PLAT NO. 419), CLACKAMAS COUNTY PLAT RECORDS, BETWEEN A 5/8" IRON ROD FOUND AT THE NORTHWEST CORNER OF LOT 21, BLOCK 3, "CARVER" AND A POINT 115.00 FEET SOUTHERLY, RIGHT ANGLE MEASURE, OF A 1" IRON PIPE FOUND AT THE NORTHEAST CORNER OF SAID BLOCK 3.

TO ESTABLISH THE NORTH RIGHT-OF-WAY LINE OF MARKET ROAD NO. 7, AS SHOWN ON (R2), CALLED "COUNTY ROAD" ON (R1), I OFFSET THE ESTABLISHED BASIS OF BEARINGS LINE SOUTHERLY, RIGHT ANGLE MEASURE, THE RECORD DISTANCE OF 100.00 FEET.

TO ESTABLISH THE SOUTH RIGHT-OF-WAY LINE OF SAID ROAD, ALSO BEING THE NORTH LINE OF THE SUBJECT PROPERTY, I OFFSET THE ESTABLISHED NORTH LINE SOUTHERLY, RIGHT ANGLE MEASURE, THE RECORD WIDTH OF 60.00 FEET, PER (R1).

TO ESTABLISH THE WEST RIGHT-OF-WAY LINE OF MIDWAY STREET, I HELD A LINE PERPENDICULAR TO THE ESTABLISHED BASIS OF BEARINGS LINE, PER (R1), FROM A 1" IRON PIPE FOUND AT THE NORTHEAST CORNER OF SAID BLOCK 3, "CARVER".

TO ESTABLISH THE EAST RIGHT-OF-WAY LINE OF MIDWAY STREET, ALSO BEING A PORTION OF THE WEST LINE OF THE SUBJECT PROPERTY, I OFFSET THE ESTABLISHED WEST LINE EASTERLY, RIGHT ANGLE MEASURE, THE RECORD WIDTH OF 50.00 FEET, PER (R1).

WHEN I MEASURED THE DISTANCE BETWEEN SAID LINE AND A 3/4" IRON PIPE FOUND AT THE NORTHWEST CORNER OF LOT B, BLOCK 2, "FIRST ADDITION TO THE TOWN OF CARVER", THE DISTANCE AGREES WITH (R2). I ALSO EXTENDED SAID LINE SOUTHERLY TO ESTABLISH THE REMAINDER OF THE WEST LINE OF THE SUBJECT PROPERTY.

TO ESTABLISH THE EAST LINE OF THE SUBJECT PROPERTY, I OFFSET THE ESTABLISHED WEST LINE EASTERLY, RIGHT ANGLE MEASURE, THE RECORD DISTANCE OF 254.70 FEET, PER (R2).

TO ESTABLISH THE SOUTH LINE OF THE SUBJECT PROPERTY, I FIRST HELD RECORD BEARINGS AND DISTANCES, PER (R2), AROUND THE EXTERIOR OF (R2), TO THE SOUTH LINE OF (R2) AND THEN OFFSET THE SOUTH LINE OF (R2) NORTHERLY, RIGHT ANGLE MEASURE, THE RECORD ALLEY WIDTH OF 20.00 FEET, PER (R2).

I ALSO TIED MONUMENTS SET IN SURVEY NUMBER 1948-016 (R3) FOR THE RIGHT-OF-WAY OF STATE HIGHWAY NO. 224 AND HELD RECORD DATA BETWEEN MONUMENTS FOUND TO ESTABLISH THE LOCATION OF SAID HIGHWAY. THE HIGHWAY RIGHT-OF-WAY AND MARKET ROAD NO. 7 RIGHT-OF-WAY DO NOT APPEAR TO BE COLINEAR, BUT THE HIGHWAY DOES NOT CROSS INTO THE SUBJECT PROPERTY. THE AREA BETWEEN THE NORTH LINE OF THE SUBJECT PROPERTY AND THE SOUTH RIGHT-OF-WAY LINE OF SAID HIGHWAY WAS PLATTED AS RIGHT-OF-WAY IN (R2), SO NO ADJUSTMENT WAS MADE TO THE BOUNDARY OF THE SUBJECT PROPERTY BECAUSE OF THIS DISCREPANCY.

LEGEND

- FOUND IRON ROD OR AS NOTED
- FOUND IRON PIPE AS NOTED (INSIDE DIAMETER MEASURED)
- SET 5/8" X 30" IRON ROD WITH GREEN PLASTIC CAP INSCRIBED "CMT LS 86811" SET ON JULY 29, 2020.
- FD FOUND
- IR IRON ROD
- IP IRON PIPE
- (H) HELD
- (R#) REFERENCE NUMBER
- (OU) ORIGIN UNKNOWN
- E-W EAST-WEST
- CL CENTERLINE
- STA STATION
- NN.NN'(R#) RECORD DATA HELD
- (NN.NN')(R#) RECORD DATA

REFERENCES

- 491
- R1 PLAT OF "CARVER" (PLAT NO. 419)
- R2 PLAT OF "FIRST ADDITION TO THE CITY OF CARVER" (PLAT NO. 491)
- R3 SN 1948-016
- R4 SN 26084
- R5 SN 11163
- R6 SN 10844
- R7 SN 6489
- Boundary Change Area
- Property Address
 16388 SE Highway 224,
 Damascus, Oregon 97089.
- Property ID: 23E18CB05300
 (1.15 Acres).
- REVISED: JULY 18, 2023.
- D1 DEED BOOK 661, PAGE 604

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

OREGON
 SEPTEMBER 11, 2018
 DAVID ROEGER
 86811

EXPIRES DECEMBER 31, 2020

SHEET 1 OF 1



CMT SURVEYING AND CONSULTING

20330 SE HIGHWAY 212
 DAMASCUS, OREGON 97089
 PHONE (503) 850-4672 FAX (503) 850-4590
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