

ORDINANCE NO. 5684

AN ORDINANCE VACATING A PORTION OF 2ND AVENUE SE, IN ALBANY, OREGON; ADOPTING FINDINGS; AND DECLARING AN EMERGENCY.

WHEREAS, in conjunction with the reconstruction of the Periwinkle Creek crossing on 2nd Avenue SE, the City of Albany has determined that this portion of right-of-way will be vacated as partial reimbursement for right-of-way granted by Jim Hammel, owner of property described in Linn County Microfilm Deed Records MF199-695; and,

WHEREAS, on April 11, 2007, the City of Albany City Council directed staff to initiate the vacation of this portion of right-of-way (File VC-02-07); and

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

WHEREAS, the Albany Hearings Board commission 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 2nd Avenue 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.

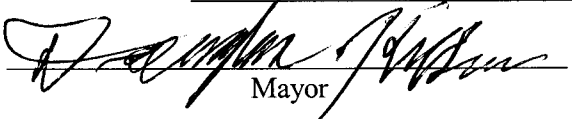
Section 3: Easement Retained. The City retains a public utility easement over the southernmost 4 feet of even width of the area being vacated. The easement will benefit the City, as well as franchise utilities, their successors, assigns, authorized agents, and/or contractors.

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-02-07

Beginning at the Southwest corner of Lot 8, located in Block 6, Hackleman's 4th Addition to Albany, Oregon, Linn County Survey 0199G; thence North 82° 54' 31" East, 164.16 feet to the Point of Beginning; thence North 82° 54' 31" East, 99.84 feet; thence South 7° 05' 29" East, 7.2 feet; thence South 82° 54' 31" West 99.84 feet; thence North 7° 05' 29" West 7.2 feet to the Point of Beginning.

This area being vacated contains 722 square feet of land, more or less.

Bearings based on County Survey No. 24272 filed on April 6, 2006, Linn County, Oregon.

HARRISON ST. SE

CLEVELAND ST. SE

**HAMMEL TRACT
MF 199-695**

SOUTHWEST CORNER OF LOT 8,
BLOCK 6, HACKLEMAN'S 4TH ADD.

POINT OF
BEGINNING

N 82°54'31" E
164.16'

N 82°54'31" E 99.84'

S 7°5'29" E
7.2'

N 7°5'29" W
7.2'

S 82°54'31" W 99.84'

2ND AVE. SE

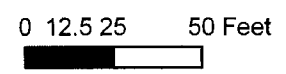
N 82°54'31" E
329.86'

N 7°5'29" W
32.97'

N 7°5'29" W
33.0'

INITIAL REFERENCE POINT: 3/4" IRON BOLT
SOUTHWEST CORNER HACKLEMAN'S 4TH ADD.
SECTION 5, TOWNSHIP 11 SOUTH, RANGE 3 WEST,
WILLAMETTE MERIDIAN, LINN COUNTY, OREGON
BASIS OF BEARINGS PER LINN COUNTY SURVEY NO. 24272

**EXHIBIT B
LEGAL DESCRIPTION MAP
VC-02-07**





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-02-07

TYPE OF APPLICATION:

Vacation of 722 square feet of right-of-way on the north side of 2nd Avenue SE, west of Cleveland Street SE.

REVIEW BODIES:

Hearings Board and City Council

APPLICANT:

The Albany City Council initiated the vacation at the request of the owner of 116 Cleveland Street SE (Jim Hammel).

ADDRESS/LOCATION:

Right-of-way adjacent to 116 Cleveland Street SE. (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-5CC

TOTAL LAND AREA:

722 square feet

PURPOSE OF REQUEST:

Vacation of public right-of-way in exchange for right-of-way needed for bridge work along 2nd Avenue SE.

EXISTING LAND USE:

Public right-of-way (2nd Avenue SE)

NEIGHBORHOOD:

Willamette

SURROUNDING ZONING:

North and East: RS-5 (Residential Single Family)
 South and West: RM (Residential Limited Multiple Family)
 (See Staff Report Attachment B)

SURROUNDING USES:

North: Single-family homes
 South: Single-family homes
 East: Single-family homes
 West: Single-family homes

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 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 2nd Avenue SE right-of-way, west of Cleveland Street SE (File VC-02-07). 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 2nd Avenue SE right-of-way, west of Cleveland Street SE (File VC-02-07). 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 not sufficient evidence to demonstrate that the review criteria have been met, the City Council may deny the application.

I MOVE that the City Council DENY the application for the vacation of a portion of 2nd Avenue SE right-of-way, west of Cleveland Street SE (File VC-02-07). 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-02-07

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

As part of the 2nd Avenue bridge/culvert work over Periwinkle Creek, right-of-way was needed from a number of adjacent property owners (see Staff Report Attachment C). The City needed 914 square feet of Jim Hammel’s property for right-of-way. Typically, right-of-way is purchased by the City with cash and/or improvements. Mr. Hammel, owner of 116 Cleveland Street SE, has asked that approximately 722 square feet of existing right-of-way along 2nd Avenue SE be vacated and combined with his property as part of his compensation for the right-of-way needed by the City for the bridge project,. Mr. Hammel’s letter stated that he felt the additional property area may allow him to meet minimum lot size and/or development density requirements as specified in the Development Code.

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 show no public sewer facilities within the area proposed for vacation.

1.3 Water. Water utility maps show no public water facilities within the area proposed for vacation.

1.4 Storm Drainage. Storm drainage utility maps show no public storm drainage facilities within the area proposed for vacation.

1.5 Other Utilities. Right-of-way widths are typically determined by not only the type and size of street that will be constructed, but also to provide room for all the various public and private utilities that may be installed within the right-of-way. When right-of-way widths are deemed to be too narrow, utility easements are often granted to allow for installation of facilities that must lie outside of the right-of-way boundaries.

1.6 Other Utilities. City staff notified the various franchise utility providers about this proposed right-of-way vacation. No responses were submitted by the franchise utilities.

1.7 Easement. The property owner is proposing to provide a four-foot-wide utility easement along the southernmost portion of the vacated area.

CONCLUSIONS

1.1 There are currently no public utilities (sanitary sewer, water, and storm drainage) within the area proposed for vacation. The property to be vacated lies in the area normally provided for street improvements (sidewalks, etc.) and public and private utilities.

1.2 Vacating this area would restrict the ability for public and private utilities to be placed within this area. Maintaining an easement would prohibit the construction of any permanent structures within this area, and make it available for future utilities.

1.3 The applicant has proposed that a four-foot-wide utility easement be maintained along this strip of vacated right-of-way.

CONDITION

1.1 The City will retain a public utility easement over the southernmost four feet of the area proposed for vacation. This easement will allow public and private utilities to be installed, 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 small strip of 2nd Avenue SE right-of-way west of Cleveland Street SE.
- 2.2 The proposed vacation would not impact the existing street or sidewalk improvements.
- 2.3 The applicant states in a letter to Staci Belcastro of the Engineering Division: *I prefer this trade because it will give me more lot area that can be counted toward Development Code minimum lot size requirements. Flood plain area can not be counted towards minimum lot area for code density requirements.*
- 2.4 ADC 6.300 states that residential lands located in a Floodplain District or Wetland area shall not be used in calculating total project density for multi-family development. Mr. Hammel’s property is zoned for multi-family development.
- 2.5 As discussed under Criterion 1 above, a public utility easement should be maintained if the area is vacated so that utility companies can install utilities if necessary. The property owner is proposing to provide a four-foot-wide utility easement along the southernmost portion of the vacated area.

CONCLUSIONS

- 2.1 The area proposed for vacation is not needed for connectivity between public rights-of-way. The area proposed for vacation does not include existing improvements for vehicle or pedestrian traffic. The right-of-way remaining after vacation would still cover all existing street improvements (including sidewalk) along this section of 2nd Avenue SE.
- 2.2 In order to provide adequate area for possible future public or private utilities, an easement should be maintained over at least a portion of the area proposed for vacation.
- 2.3 A portion of Mr. Hammel’s property lies within the 100-year floodplain. Land within the floodplain cannot be used in density calculations for multi-family development. The additional area that would be incorporated into his parcel would increase the amount usable land for the purposes of density calculations for future development.

CONDITION

- 2.1 See Condition 1.1.
- (3) ***The requested vacation will not have a negative effect on traffic circulation or emergency service protection.***

FINDING OF FACT

- 3.1 The portion of 2nd Avenue SE being proposed for vacation is a strip of land approximately 7.2 feet wide along the northern boundary of the right-of-way. No transportation improvements (e.g., street or sidewalk) exist within this area.

CONCLUSIONS

- 3.1 The vacation of this portion of 2nd Avenue SE would have no adverse impact on traffic circulation in this area.

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 property directly abutting it (116 Cleveland Street SE). The property owner has offered to plant four large street trees within the vacated area.
- 4.2 The area to be vacated is behind the existing sidewalk and is currently being maintained by the property owner in the same manner as the front yard of the adjacent property.
- 4.3 If the vacation is approved, it would reduce the area available to construct setback sidewalk along this property in the future.
- 4.4 No driveways exist in the area of the proposed vacation. Vacating this area would not preclude the construction of a future driveway.
- 4.5 The vacated area would be given an RM (Residential Medium Density) zoning designation, consistent with the adjacent property's zoning. This would add approximately 670 square feet of area for calculating the amount of development that could occur on Mr. Hammel's parcel.

CONCLUSION

- 4.1 The area to be vacated is currently being maintained in the same manner as the front yard of the adjacent property.

CONDITION

- 4.1 The owner of the adjacent parcel (Mr. Hammel) must plant at least four street trees within the area to be vacated. The species of trees to be planted must be approved by the City Forester. The trees shall be planted within one year of the effective date of this vacation.

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

FINDINGS OF FACT

- 5.1 Vacating the right-of-way as proposed would give Mr. Hammel more property with which to further develop his lot.
- 5.2 Vacating the portion of 2nd Avenue SE, west of Cleveland Street SE, would reduce the amount of money the City would be required to pay Mr. Hammel for the right-of-way the City needs adjacent to the new creek crossing.

CONCLUSIONS

- 5.1 Vacating the right-of-way as proposed is unlikely to produce negative impacts for the public.
- 5.2 If setback sidewalk was to be constructed within this area in the future, it would likely require an additional easement be granted by the property owner.
- 5.3 This review criterion is met.



ATTACHMENT A
VICINITY MAP
VC-02-07



Area of
Proposed
Vacation



RS-5

RM

NC

OP

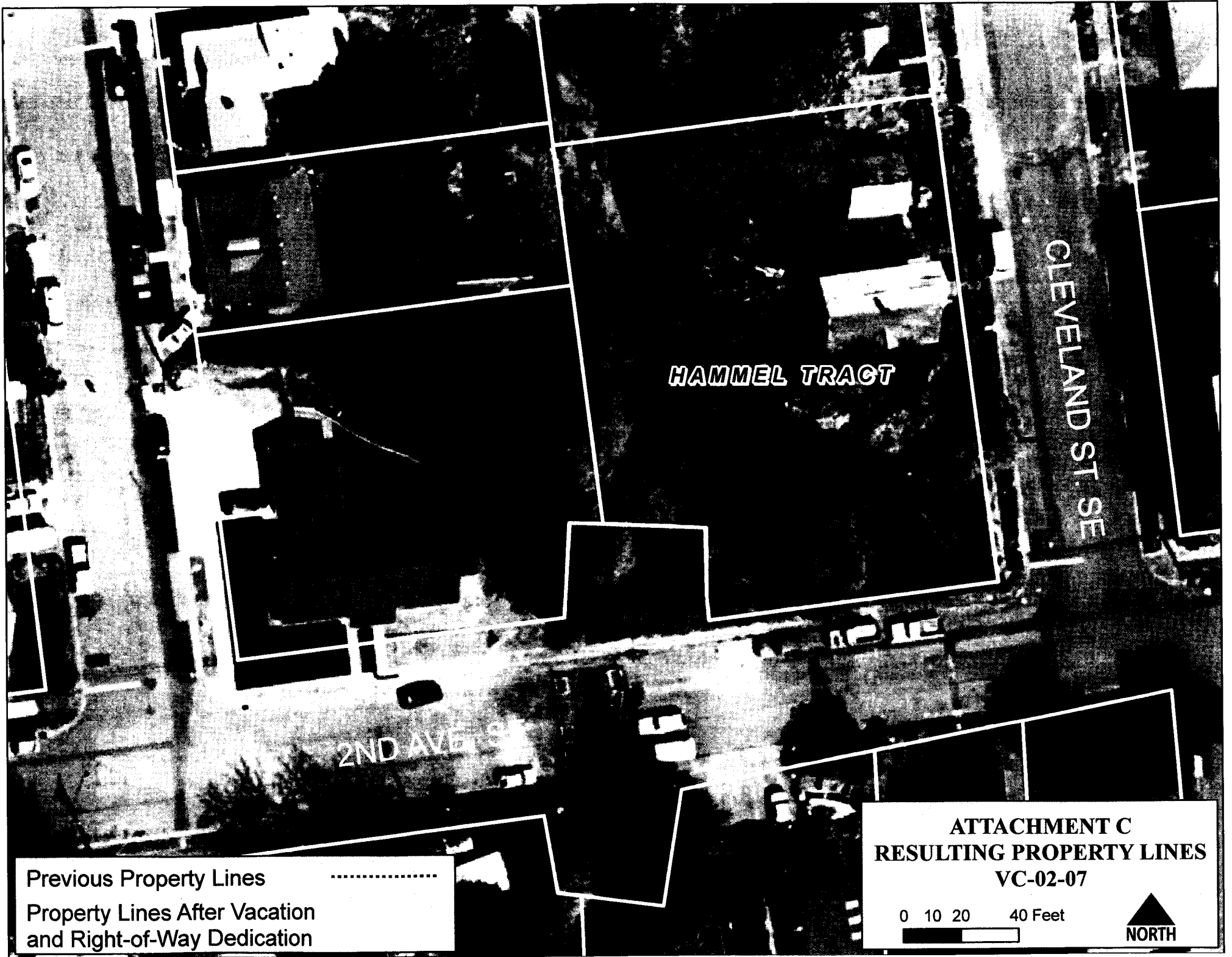
RM

Area of
Proposed
Vacation

**ATTACHMENT B
ZONING MAP
VC-02-07**

0 50 100 200 Feet





HAMMEL TRACT

CLEVELAND ST. SE

2ND AVE. SE

Previous Property Lines



Property Lines After Vacation
and Right-of-Way Dedication

**ATTACHMENT C
RESULTING PROPERTY LINES
VC-02-07**

0 10 20 40 Feet

