

RESOLUTION NO. 1744

A RESOLUTION ACCEPTING A PERPETUAL EXCLUSIVE EASEMENT FROM GEORGE AND ISABELLE ZIFCAK FOR THE OPERATION, MAINTENANCE, REPAIR, REPLACEMENT AND/OR MODIFICATION OF COMPONENTS OF THE PUBLIC STORM WATER SYSTEM

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:


1. George and Isabelle Zifcak are the owners of the real property proposed for development as the Sandy Dell Acres subdivision.
2. Storm water management facilities necessary for the development of Sandy Dell Acres are proposed to be located on private property within the subdivision.
3. It is prudent for the City to own, operate and maintain this particular facility in order to protect the public health, safety and welfare.
4. In order for the city to properly ensure and protect its ability to operate and maintain a storm water facility on private property, it is necessary for the City to obtain easement rights.
5. George and Isabelle Zifcak have agreed to dedicate the necessary easement and have provided a signed easement document of a form and content that is in accordance with the requirements of the City (attached).

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City of Troutdale accepts the perpetual exclusive easement, included herewith as Attachment A, for the operation, maintenance, repair, replacement and/or modification of components of the public stormwater system.

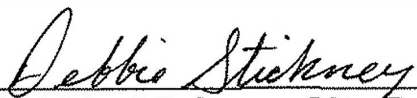
Section 2. This resolution is effective upon adoption

YEAS: 6
NAYS: 0
ABSTAINED: 0



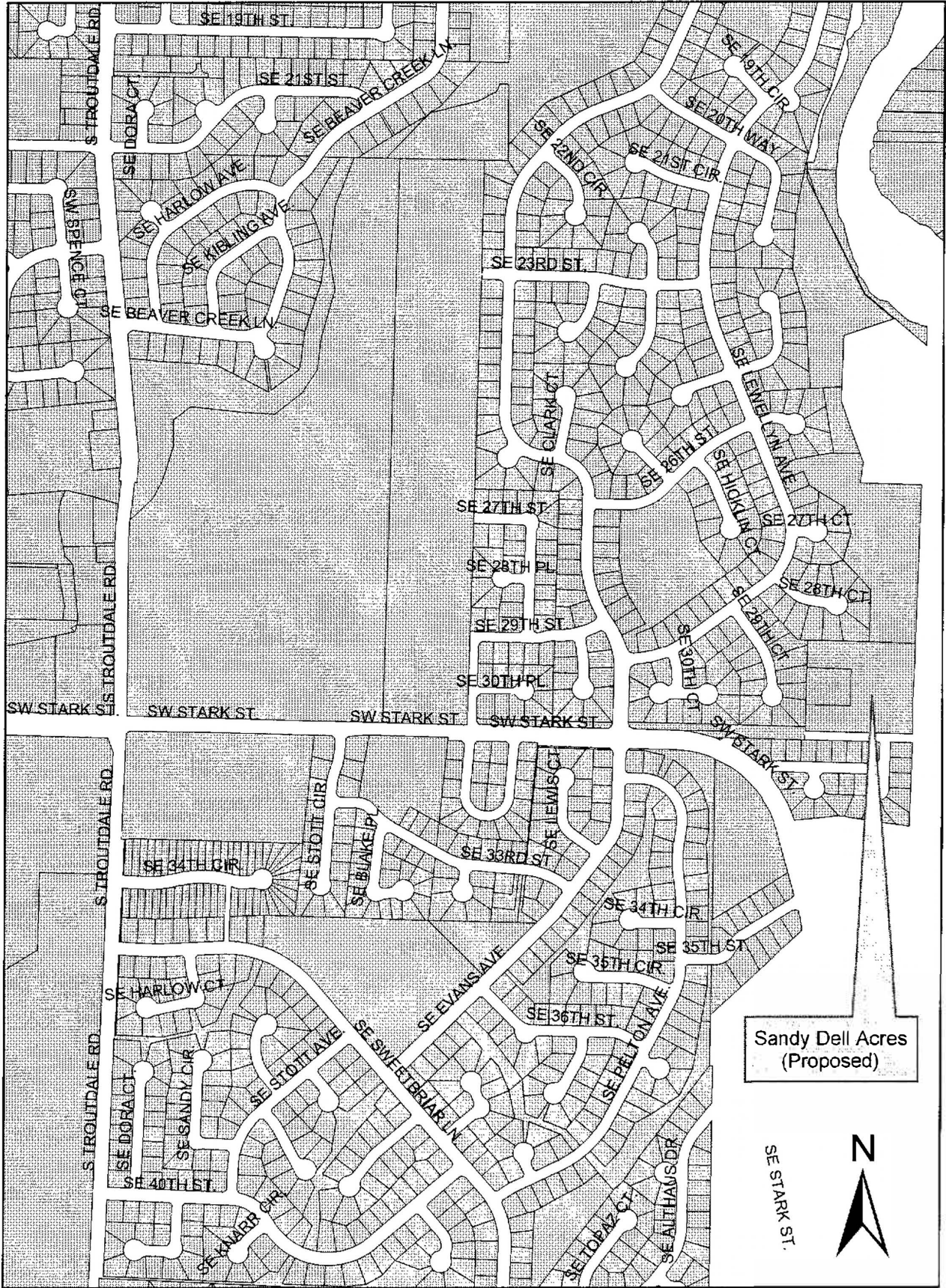
Paul Thalhofer, Mayor
April 14, 2005

Date



Debbie Stickney, City Recorder

Adopted: April 12, 2005



Sandy Dell Acres Vicinity Map

After recording, return to:
City Recorder
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

PMU-2105

Recorded in MULTNOMAH COUNTY, OREGON
C. Swick, Deputy Clerk
A49 5 ATTDS
Total : 41.00
2005-070304 04/21/2005 02:44:45pm

PUBLIC UTILITY EASEMENT AGREEMENT

This Public Utility Easement Agreement ("AGREEMENT") is entered into by George A. and Isabelle Zifcak, ("GRANTOR"), and the CITY OF TROUTDALE, an Oregon municipal corporation ("GRANTEE"), as of the date the last GRANTOR signs the Certificate of Grantor.

RECITALS

A. GRANTOR owns the property described in this Agreement under paragraph 11 (the "Easement Area"). GRANTOR also owns other real property adjacent to and in the vicinity of the Easement Area as shown in the tentative plat on file with the City of Troutdale, approved by the Council on September 23, 2003, commonly known as "Sandy Dell Acres."

B. GRANTEE is a municipal corporation in the State of Oregon which owns and operates public utilities.

C. The purpose of this Agreement is to grant a utility easement to GRANTEE for access and use of the Easement Area.

EASEMENT GRANTED

1. **Grant.** For valuable consideration other than money that is acknowledged and received, GRANTOR hereby grants to GRANTEE, and GRANTEE hereby accepts from GRANTOR, a perpetual exclusive easement for use of the Easement Area by GRANTEE to operate, maintain, repair, replace, and/or modify components of a public storm water system. The City shall operate, maintain, repair, replace, and/or modify components of the public storm water system consistent with all local, state and federal laws and to professional engineering standards.

2. **Limitations.** GRANTOR shall not construct, install, nor place any structure, pavement, or vegetation within the Easement Area except for shallow-root grasses and low-growing shrubs (but not trees), and a fence as indicated in Paragraph 4. Any damages to GRANTEE's utilities caused by GRANTOR's construction, installation, or placement of shallow-root grasses, low-growing shrubs, fences, or any unauthorized structures, pavement or vegetation, within the Easement Area shall be repaired or replaced by GRANTOR, or by the GRANTEE at the GRANTOR's expense, as determined by the GRANTEE

3. **Use and Access.** GRANTOR shall allow GRANTEE unrestricted access to the Easement Area at all times to properly operate, maintain, repair, replace, and/or modify its utilities. Any loss, damage, or destruction caused by GRANTEE to GRANTOR's property in accessing the Easement Area or in performing the aforementioned actions, whether or not such loss, damage or destruction was to GRANTOR's shallow-root grasses, low-growing shrubs or fences, that are allowed in accordance with paragraph 2, shall be the responsibility of GRANTOR.

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GRANTEE shall be responsible for the maintenance of the components of the public storm water system and the control of invasive vegetation within the Eastment Area.

4. **Improvements.** GRANTOR shall furnish and install, at GRANTOR'S sole expense, a fence along the western side of the Easement Area. The exact location, size, and type of the fence must be approved by GRANTEE, whose consent shall not be unreasonably withheld.

5. **Binding Effect, Run with the Land.** This Agreement shall run with the land as to all real property burdened and benefited, and shall inure to the benefit of GRANTOR, GRANTEE and their respective successors and assigns.

6. **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

7. **Integration.** This Agreement constitutes the entire, final and complete agreement of the parties pertaining to this utility easement, and supersedes and replaces all other written and oral agreements heretofore made or existing by and between the parties or their representatives insofar as the Easement Area is concerned. Neither party shall be bound by any promises, representations or agreements except as are expressly set forth herein.

8. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon. The parties agree to venue in Multnomah County, state of Oregon.

9. **Nonwaiver.** Failure by either party at any time to require performance by the other party of any of the provisions in this Agreement shall in no way affect the party's rights under the Agreement to enforce the provisions in this Agreement, nor shall any waiver by a party of the breach of the provisions in this Agreement be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

10. **Indemnification.** Each party agrees to indemnify and hold the other party harmless from any loss, claim or liability arising in any manner out of such party's use of the Easement Area. In addition, Grantor agrees to indemnify and hold Grantee harmless from any loss, claim or liability arising from Grantee's design, construction or installation of the public storm water system.

11. **Easement Area.**

A tract of land located in the southeast $\frac{1}{4}$ of Section 36, Township 1 North, Range 3 East, Willamette Meridian, City of Troutdale, Multnomah County, Oregon, the boundaries being described as follows:

Beginning at a 3 - $\frac{3}{4}$ " brass disc denoting a section corner, also being the southeast corner of the tentative plat of the Sandy Dell Acres subdivision; thence North $00^{\circ} 32' 42''$ East a distance of 30.00 feet to the initial point, said initial point being the southeast corner of tentative plat Lot 11 of the tentative plat of the Sandy Dell Acres subdivision; thence North $00^{\circ} 32' 42''$ East a distance of 218.06 feet to the northeast corner of tentative plat Lot 9 of the tentative plat of the Sandy Dell Acres subdivision; thence South $89^{\circ} 44' 38''$ West a distance of 15.00 feet; thence South $00^{\circ} 32' 42''$ West a distance of 218.07 feet; thence North $89^{\circ} 51' 08''$

East a distance of 15.00 feet to the initial point, containing 3,271 square feet more or less.

12. Remedies. The easment contained in this Agreement may be enforced by an action at law or a suit in equity seeking injunctive and other equitable relief, together with any other remedies available at law.

CERTIFICATE OF GRANTOR

I, George A. Zifcak, owner of the property described above, hereby certify that the foregoing easement is granted to the City of Troutdale.

Dated this 29 day of MARCH, 2005.

George A. Zifcak
Grantor's Signature

GEORGE A. ZIFCAK
Grantor's Typed or Printed Name

7110 SE MAIN ST
Address

PORTLAND OR 97215
City, State, Zip Code

503 255-9119
Telephone Number

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

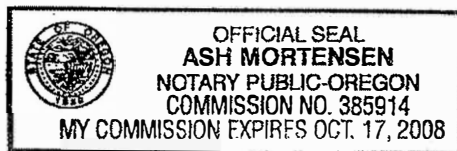
Personally appeared the above named George Antoine Zifcak and acknowledged the foregoing instrument to be his voluntary act and deed.

BEFORE ME Ash Mortensen

Notary Public for Oregon

Commission Expires: 10-17-2008

(seal)



CERTIFICATE OF GRANTEE

I, Debbie Stickney Recorder of the City of Troutdale, hereby certify that the foregoing easement was accepted by the City Council of the City of Troutdale on the 12th day of April, 2005 by Resolution No. 1744.

Dated this 13th day of April, 2005.

Debbie Stickney
City Recorder

(seal)

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

Personally appeared the above named City Recorder and acknowledged the foregoing instrument to be the voluntary act and deed of the CITY OF TROUTDALE.

BEFORE ME: Sarah Greif
Notary Public for Oregon
Commission Expires: 8/7/07

(seal)



MULTNOMAH
RECORDING SECTION
501 SE HAWTHORNE #158
PORTLAND OR 97214
(503) 988-3034

Receipt # : 190472
04/21/2005

2005070304 04/21/05 02:44pm

EASEMENT

PAGE FEE	25.00
SURVEY FEE	5.00
DEPT OF REVENUE	10.00
OR LAND INFO SYS	1.00

Total \$41.00

=====
Grand Total \$41.00

CHECK	\$41.00
Amount Due	\$0.00

Thank You. Retain this
receipt for your records.