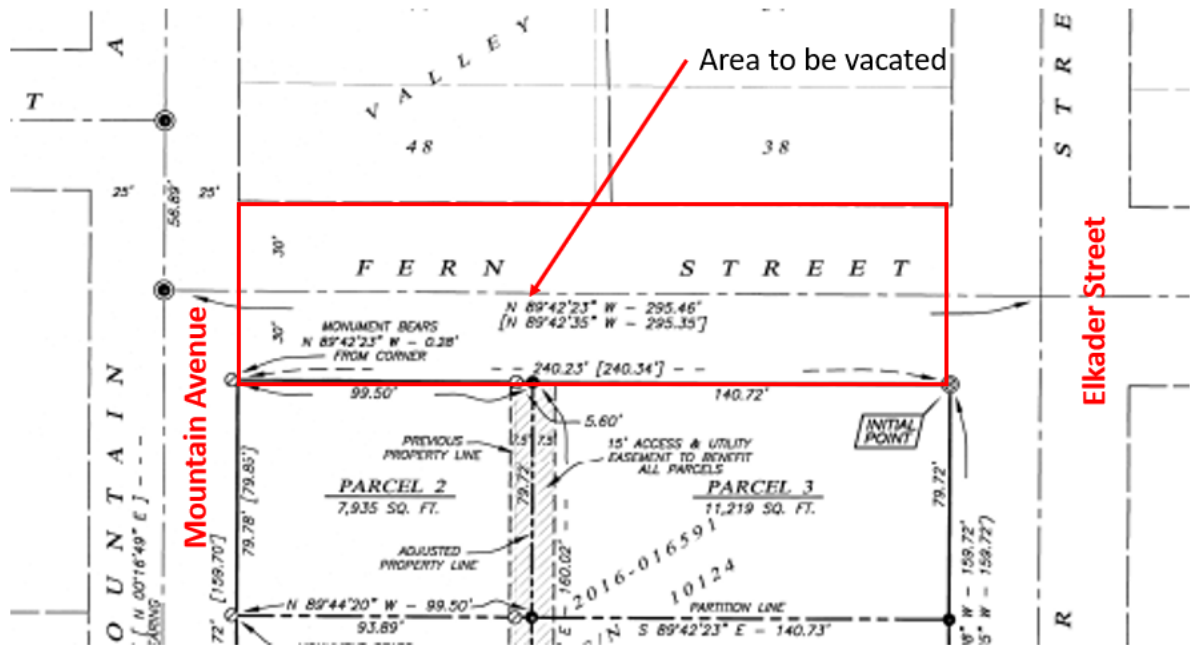




Agenda Item	Right of Way Vacation – Fern Street	
From	Scott Fleury PE	Public Works Director
Contact	Scott.fleury@ashland.or.us	
Item Type	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input checked="" type="checkbox"/> Presentation <input type="checkbox"/>	

SUMMARY

Before the Council is a request to initiate the vacation of a portion of the public right of way. The right of way in question is a portion of Fern Street between South Mountain Avenue and Elkader Street. This is a un-improved non maintained right of way that basically provides for driveway access to adjacent lots on Fern Street.



POLICIES, PLANS & GOALS SUPPORTED

City Council:

- Evaluate real property and facility assets to strategically support city mission and goals.

PREVIOUS COUNCIL ACTION

No previous action on this item, but Council has taken numerous actions in the past regarding vacating public right of way. The last action occurred in in 2018 with the vacation of a portion of Terrace Street ([Staff Report](#)).

BACKGROUND AND ADDITIONAL INFORMATION

The City of Ashland was approached by an adjacent property owner on Fern Street about the City initiating the vacation of the unimproved and non-maintained section. City Management informed the





Council Business Meeting

resident the City could move forward with the process to vacate the right of way through initiation by the City Council as allowed by Oregon Revised Statute (ORS) 271.130, reference below.

271.130 Vacation on city governing body's own motion; appeal.

- (1) **The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners.** Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.
- (2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.
- (3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.
- (4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases.
- [Amended by 1995 c.658 §101]

Staff informed the property owner of requirements for vacating city right of way which include public hearings at the Planning Commission and City Council along with development of the appropriate legal descriptions and easement overlays for access management to the adjoining properties.

The specific requirements for right of way vacations are detailed in Ashland Municipal Code (AMC) Chapter 4.18 and Oregon Revised Statute (ORS) 271.080 thru 271.230.

Public Works performed an initial assessment to determine if a right of way vacation would be in the public interest. The current grade does not allow for an appropriate street connection between Elkader Street and Mountain Avenue and there are no public utilities in the unimproved section of Fern Street.

Generally, the request upon review by the Planning Commission in development of the recommendation to vacate for the City Council is to provide for a pedestrian access easement that would connect Elkader Street to Mountain Avenue across the right of way to be vacated. This easement would be 10' in width and align with the centerline of the road currently.



Council Business Meeting

Right of Way Vacation Requirements:

In order to appropriately process a right of way vacation certain state and local codes must be addressed. The Oregon Revised Statutes (ORS) and City of Ashland Municipal Code detail the requirements to vacate City property:

4.18.010 Purpose

The purpose of this Chapter is to establish the procedure for processing requests for the vacation of public rights-of-way and places, and to require petitioners for vacation to deposit with the City Recorder a fee sufficient to cover the cost of publication, posting and other anticipated expenses as authorized by ORS 271.080, et seq.

4.18.020 Application

Any person interested in filing a petition for the vacation of all or part of any street, alley, or other public place, shall submit such petition in the form prescribed by the City Engineer pursuant to ORS 271.080, and upon filing of the petition shall deposit with the City Recorder a filing fee established by resolution of the City Council. (Ord. 2654, 1991; Ord. 2742, 1994)

- **This is not required if the Council initiates the vacation process as allowed by ORS.**

4.18.030 Review by Planning Commission

Upon receipt of the petition, the same shall be referred to the City Engineer for a determination of whether it contains the requested number of sworn signatures. The City Engineer shall return any petition not meeting the requirements of ORS 271.080, together with the filing fee to the petitioner. If the City Engineer determines that the petition is sufficient, it shall be referred to the City Planning Commission for its review and recommendation to the City Council. The Planning Commission shall submit its report to the City Council within sixty (60) days of receipt. Upon receipt of the report by the Commission, or if no report is received from the Commission upon the expiration of sixty (60) days, the City Manager shall set the matter for public hearing as set forth in ORS 271.100, et seq.

- **This meeting will need to be scheduled in the future to allow for the Planning Commission to make a recommendation to the City Council regarding the vacation.**

4.18.040 Public Hearings

Public hearings shall be held as set forth in ORS 271.120, at which time the petitioner and all affected parties shall be afforded an opportunity to present their views either orally or in writing. The report of the Planning Commission, if any, shall be made a part of the record.

- **This will be done if Council initiates the vacation process as a formal ordinance and maps of survey will be completed.**

4.18.050 Action By Council

The City Council, after due consideration of testimony by affected parties, and the report of the Planning Commission may approve, reject, or modify the area proposed for vacation which in its sole judgment is deemed in the public interest. (Ord. 2164 §1, 1982)





Council Business Meeting

If approved by Council, the property owner will be required to finalize the map of survey showing the public utility easement if needed; have new property deeds created that describe new property boundary for the tax lot and have all documents recorded at the County. The City Recorder will have the ordinance approving the Right of Way Vacation recorder at the County. If not approved by Council, there is no further action by staff or property owner and the right of way will remain in place.

FISCAL IMPACTS

The only resource requirements were/are associated with staff time to bring the vacation forward through the Planning Commission and City Council. The owners will be responsible for the development of new property deeds and recording the applicable documents with the County. If the property is vacated, it will become private and assessable for property taxes as part of the individual tax lots the right of way is vacated to.

STAFF RECOMMENDATION

Staff recommends approval of the right of way vacation ordinance.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to begin the process to vacate a portion of the public right of way on Fern Street as allowed by ORS 271.130 and then follow Ashland Municipal Code 14.18.

I move to take no action on the matter.

REFERENCES & ATTACHMENTS

Attachment #1: Partition Plat P-29-2018

APPROVALS:

EXAMINED AND APPROVED THIS 5th DAY OF OCTOBER, 2018
ASHLAND PLANNING DEPARTMENT
PLANNING FILE NO. PA #2016-01891 & PA #2017-02269

EXAMINED AND APPROVED THIS 3rd DAY OF October, 2018
Bradley F. Barber
CITY SURVEYOR

DECLARATION:

KNOW ALL PERSONS BY THESE PRESENTS, THAT GIL LIVNI AND KATHLEEN LIVNI, TRUSTEES OF THE LIVNI FAMILY TRUST, ARE THE OWNERS OF THE LANDS HEREON DESCRIBED, AND HAVE PARTITIONED THE LAND AS SHOWN HEREON, AND THAT THE SIZE OF THE PARCELS AND THE LENGTHS OF ALL LINES ARE PLAINLY SET FORTH AND THAT THIS PLAT IS A CORRECT REPRESENTATION OF THE LAND PARTITION. WE HEREBY CREATE A 15.00 FOOT WIDE PRIVATE ACCESS AND UTILITY EASEMENT, OVER AND ACROSS PARCEL 2 AND PARCEL 3 FOR THE BENEFIT OF ALL FOUR PARCELS, AND 7.50 FOOT WIDE PRIVATE ACCESS EASEMENT OVER AND ACROSS PARCEL 1 FOR THE BENEFIT OF PARCEL 4 AND A 7.50 FOOT WIDE PRIVATE ACCESS EASEMENT OVER AND ACROSS PARCEL 4 FOR THE BENEFIT OF PARCEL 1, AS SHOWN HEREON.

GIL LIVNI, TRUSTEE
Kathleen Livni
KATHLEEN LIVNI, TRUSTEE

ACKNOWLEDGEMENT

STATE OF OREGON }
JACKSON COUNTY }SS

PERSONALLY APPEARED THE ABOVE NAMED GIL LIVNI, TRUSTEE OF THE LIVNI FAMILY TRUST, ON THIS 26 DAY OF September, 2018, AND ACKNOWLEDGED THE FOREGOING TO BE HIS VOLUNTARY ACT AND DEED.

NOTARY SIGNATURE Carolyn Marlene Schwendener
NOTARY PUBLIC - OREGON Carolyn Marlene Schwendener
COMMISSION NO. 959884
MY COMMISSION EXPIRES: March 2, 2021

ACKNOWLEDGEMENT

STATE OF OREGON }
JACKSON COUNTY }SS

PERSONALLY APPEARED THE ABOVE NAMED KATHLEEN LIVNI, TRUSTEE OF THE LIVNI FAMILY TRUST, ON THIS 26 DAY OF September, 2018, AND ACKNOWLEDGED THE FOREGOING TO BE HER VOLUNTARY ACT AND DEED.

NOTARY SIGNATURE Carolyn Marlene Schwendener
NOTARY PUBLIC - OREGON Carolyn Marlene Schwendener
COMMISSION NO. 959884
MY COMMISSION EXPIRES: March 2, 2021

Assessor's Map No. 39 1E 16 AA, Tax Lots 9000, 9001 & 9002

LAND PARTITION
PARTITION PLAT NO. P - 29 - 2018

LYING SITUATE WITHIN
NORTHEAST QUARTER OF SECTION 16
TOWNSHIP 39 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN
CITY OF ASHLAND, JACKSON COUNTY, OREGON

FOR
Livni Family Trust
1135 Fern Street
Ashland, Oregon

SURVEYOR'S CERTIFICATE

I, SHAWN KAMPMANN, DULY REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF OREGON, DO HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH THE PROPER MONUMENTS AS PROVIDED BY LAW, THE TRACT OF LAND HEREON SHOWN, THIS SAID PLAT BEING A CORRECT REPRESENTATION OF THE SAME, AND THE FOLLOWING IS AN ACCURATE DESCRIPTION OF THE BOUNDARY LINES.

A LAND PARTITION AND PROPERTY LINE ADJUSTMENT BETWEEN THOSE TRACTS OF LAND DESCRIBED WITHIN INSTRUMENT NO. 2016-016591 OF THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON, LYING SITUATE WITHIN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 39 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, CITY OF ASHLAND, JACKSON COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AND BOUNDED AS FOLLOWS, TO WIT:

ALL OF PARCEL NO. 1, PARCEL NO. 2 AND PARCEL NO. 3 OF THAT MINOR LAND PARTITION RECORDED NOVEMBER 29, 1984 IN THE "RECORD OF PARTITION PLATS" OF JACKSON COUNTY, OREGON, AND FILED AS SURVEY NO. 10124 IN THE OFFICE OF THE JACKSON COUNTY SURVEYOR.

I HEREBY CERTIFY THAT THIS PLAT IS AN EXACT COPY OF THE ORIGINAL.

Shawn Kampmann
SURVEYOR

SURVEY NOTES:

THE FOLLOWING ENCUMBRANCES DENOTED IN AMERITITLE REPORT NO. 252150AM DATED SEPTEMBER 24, 2018, EITHER DOES NOT AFFECT THE SUBJECT TRACT, ARE BLANKET IN NATURE OR OTHERWISE INSUFFICIENTLY DESCRIBED, AND THEREFORE NOT SHOWN GRAPHICALLY ON THIS PLAT.

- RESTRICTIVE COVENANTS REGARDING FUTURE IMPROVEMENTS TO FERN STREET, INCLUDING THE TERMS AND PROVISIONS THEREOF, INCLUDING AMONG OTHER THINGS A WAIVER OF RIGHT OF REMONSTRANCE, RECORDED APRIL 22, 1985 WITHIN DOCUMENT NO. 1985-06055 IN THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON.
- REGULATIONS, INCLUDING LEVIES, ASSESSMENTS, WATER AND IRRIGATION RIGHTS AND EASEMENTS FOR DITCHES AND CANALS OF TALENT IRRIGATION DISTRICT.

** RECEIVED **
Date 10/9/18 By PB
This survey consists of
2 sheet(s) Map
0 page(s) Narrative
JACKSON COUNTY SURVEYOR

RECORDING:

FILED FOR RECORD THIS 9th OF October, 2018, AT 10:43 O'CLOCK A.M. AND RECORDED IN VOLUME 29, PAGE 29, OF THE PLAT RECORDS OF JACKSON COUNTY, OREGON.

Christine D. Walker
COUNTY CLERK
Jonny J. Morgan
DEPUTY

COUNTY SURVEYOR FILE NO. 22648

TAX COLLECTOR'S STATEMENT:

ALL TAXES, FEES, ASSESSMENTS, OR OTHER CHARGES AS REQUIRED BY O.R.S. 309.008 HAVE BEEN PAID AS OF Oct. 9th, 2018.

CKR, Deputy
TAX COLLECTOR
10/9/18
Adam H. Adams, Agent
ASSESSOR
10/9/18
DATE

SURVEY NARRATIVE
TO COMPLY WITH O.R.S. 209.250

PURPOSE: TO SURVEY AND MONUMENT A LAND PARTITION OF PARCEL NO. 3 AND A PROPERTY LINE ADJUSTMENT BETWEEN PARCEL NO. 3 AND PARCELS NO. 1 & 2 OF THOSE TRACTS OF LAND DESCRIBED WITHIN INSTRUMENT NO. 2016-016591 IN THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON, LYING SITUATE WITHIN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 39 SOUTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN, CITY OF ASHLAND, JACKSON COUNTY, OREGON.

PROCEDURE: UTILIZING AN ELECTRONIC LEICA TS-16 ROBOTIC TOTAL STATION WITH RANGING PRISMS, IN CONJUNCTION WITH SURVEY CONTROL PREVIOUSLY ESTABLISHED BY THIS OFFICE DURING THE PERFORMANCE OF SURVEY NO. 18996 & 20489, I SURVEY AND MONUMENT THE LAND PARTITION AND PROPERTY LINE ADJUSTMENT AS SHOWN. THE SUBJECT TRACTS WERE ORIGINALLY CREATED BY THAT MINOR LAND PARTITION RECORDED ON NOVEMBER 29, 1984 IN VOLUME 5, PAGE 200 OF THE "MINOR LAND PARTITIONS" RECORDS IN JACKSON COUNTY, OREGON, AND FILED AS SURVEY NO. 10124 IN THE OFFICE OF THE JACKSON COUNTY SURVEYOR. MONUMENTS RECOVERED FROM SAID SURVEY FIT WELL WITH THE DEED AND SURVEY RECORDS AND WERE HELD FOR POSITION, EXCEPT AS OTHERWISE SHOWN. THE RIGHT OF WAY FOR SOUTH MOUNTAIN AVENUE WAS DETERMINED BY HOLDING CENTERLINE MONUMENTS BETWEEN ASHLAND STREET AND PROSPECT STREET AS DENOTED ON SURVEY NO. 20489. ELKADER STREET WAS DETERMINED BY SURVEY NO. 18996 AND 7458 AND MONUMENTS RECOVERED AT THE NORTHEAST AND SOUTHEAST CORNERS OF PARCEL NO. 3 PER SURVEY NO. 10124. FERN STREET WAS DETERMINED BY HOLDING MONUMENTS RECOVERED ALONG THE NORTH LINE OF SAID SURVEY NO. 10124 AND REFERENCE MONUMENTS RECOVERED AT THE INTERSECTION OF FERN STREET WITH ROCA STREET PER SURVEY NO. 10124. THE LAND PARTITION AND PROPERTY LINE ADJUSTMENT WAS SURVEYED AND MONUMENTED AS SHOWN HEREON.

REGISTERED PROFESSIONAL LAND SURVEYOR

Shawn Kampmann

OREGON
JULY 14, 1998
SHAWN KAMPMANN
2883 LS

RENEWAL DATE: 6/30/2019

SURVEYED BY:
POLARIS LAND SURVEYING LLC
P.O. BOX 459
ASHLAND, OREGON 97520
(541) 482-5009

DATE: AUGUST 24, 2018
PROJECT NO. 1032-16

LAND PARTITION
PARTITION PLAT NO. P - 29 - 2018

LYING SITUATE WITHIN
 NORTHEAST QUARTER OF SECTION 16
 TOWNSHIP 39 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN
 CITY OF ASHLAND, JACKSON COUNTY, OREGON

FOR
Livni Family Trust
 2532 Old Mill Way
 Ashland, Oregon

LEGEND

- 2-1/2" BRONZE CAP IN MONUMENT WELL STAMPED "CITY OF ASHLAND LS 759" PER S/N 15659 & 18996 (RECOVERED)
- ⊙ 1-1/4" IRON PIPE, NO OTHER MARKINGS, PER S/N 10124 & S/N 18996 (RECOVERED)
- 5/8" IRON PIN w/ YELLOW PLASTIC CAP STAMPED "SWAIN RLS 759" PER S/N 7458 (RECOVERED)
- ⊖ 1/2" IRON PIPE w/ YELLOW PLASTIC PLUG STAMPED "SWAIN RLS 759" PER S/N 10124 (RECOVERED)
- 5/8" x 30" IRON PIN w/ ORANGE PLASTIC CAP STAMPED "KAMPMANN PLS 2883" (ESTABLISHED)
- SUBJECT PROPERTY LINE
- - - PARTITION / ADJUSTED LINE
- BOUNDARY LINE
- CENTERLINE
- - - EASEMENT LINE
- x-x-x- FENCELINE
- O.R. OFFICIAL RECORDS, JACKSON COUNTY CLERK
- S/N SURVEY FILE NUMBER, JACKSON COUNTY SURVEYOR
- () SURVEY RECORD DATA PER S/N 18996
- [] SURVEY RECORD DATA PER S/N 7458 & S/N 10124
- ▨ PRIVATE ACCESS & UTILITY EASEMENT BY THIS PLAT

BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS THE CENTERLINE OF SOUTH MOUNTAIN AVENUE, HAVING A RECORD BEARING OF NORTH 00°17'13" EAST, AS REFERENCED ON SURVEY NO. 18996, ON FILE IN THE OFFICE OF THE JACKSON COUNTY SURVEYOR.

I HEREBY CERTIFY THAT THIS PLAT IS AN EXACT COPY OF THE ORIGINAL.

Shawn Kampmann
 SURVEYOR

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

Shawn Kampmann

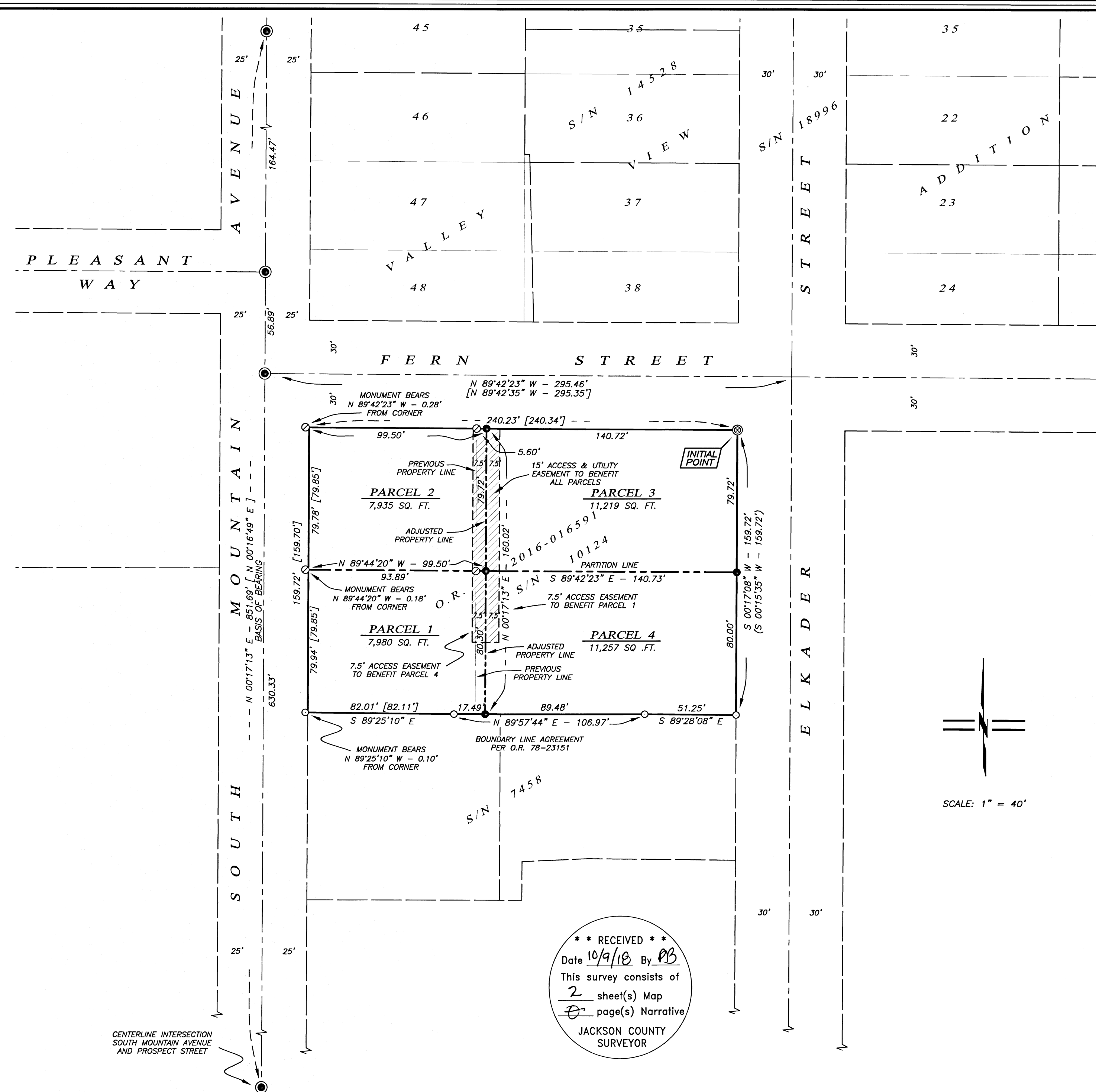
OREGON
 JULY 14, 1998
 SHAWN KAMPMANN
 2883 LS

RENEWAL DATE: 6/30/2019

SURVEYED BY:
POLARIS LAND SURVEYING LLC
 P.O. BOX 459
 ASHLAND, OREGON 97520
 (541) 482-5009

DATE: AUGUST 24, 2018
 PROJECT NO. 1032-16

FILE: SURVEYS\1094-16\HILL PARTITION PLAT.DWG SHEET 2 of 2



**** RECEIVED ****
 Date 10/9/18 By PB
 This survey consists of
2 sheet(s) Map
0 page(s) Narrative
 JACKSON COUNTY
 SURVEYOR