

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	June 6, 2011
Action Required:	Approval of Ordinance
Presenter:	Ebony Walden, NDS Planner
Staff Contacts:	Ebony Walden, NDS Planner
Title:	Closing of Portion of Seminole Court Right of Way

Background: Towers Limited Partnership (the “Towers”), owner of the Seminole Square Shopping Center, has petitioned the City to close a small portion of the Seminole Court right of way (basically a curb cut to provide access) so they can build a side addition to the existing building fronting on Seminole Court. The subject area contains a gravel parking area, landscaping, a fence, a small section of sidewalk, a private storm water pipe and drain, and a driveway entrance. The Towers owns all the land adjacent to the subject right of way.

Discussion: The Towers has submitted the information and documentation required under the City’s Street Closing Policy, and City staff has reviewed that documentation. Relevant staff comments on the existence of public utilities, fair market value of the land, and the impact the proposed closing would have on the general public were evaluated, and there was no objection to the closing from City staff.

This portion of Seminole Court was established by subdivision plat recorded in 1982. The request for the closing of the subject right of way was reviewed by the Planning Commission as a vacation of a portion of the original 1982 subdivision plat. At the May 10, 2011 Joint Public Hearing, the Planning Commission discussed issues related to the proposed building expansion and vehicular access. The applicant requested that City Council not require compensation for the street closing. No public comment was received. The Planning Commission unanimously recommended approval of the street closing.

State law allows this type of street closing to be conditioned on payment by the abutting property owner of the right-of-way’s fair market value or its contributory value to the abutting property. Since the City will be working with the property owner on the construction of Hillsdale Drive Extended through the shopping center, staff recommends approval of the closing without the payment of compensation.

Budgetary Impact: None.

Recommendation: Approve the Ordinance to close and vacate a portion of Seminole Court.

Attachments: Staff Report
Proposed Ordinance

CITY OF CHARLOTTESVILLE
DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT SERVICES
STAFF REPORT
PLANNING COMMISSION AND CITY COUNCIL JOINT PUBLIC
HEARING



CLOSING OF STREET/ALLEY

Author of Staff Report: Ebony Walden

Date of Staff Report: March 23, 2011

Date of Hearing: May 10th, 2011

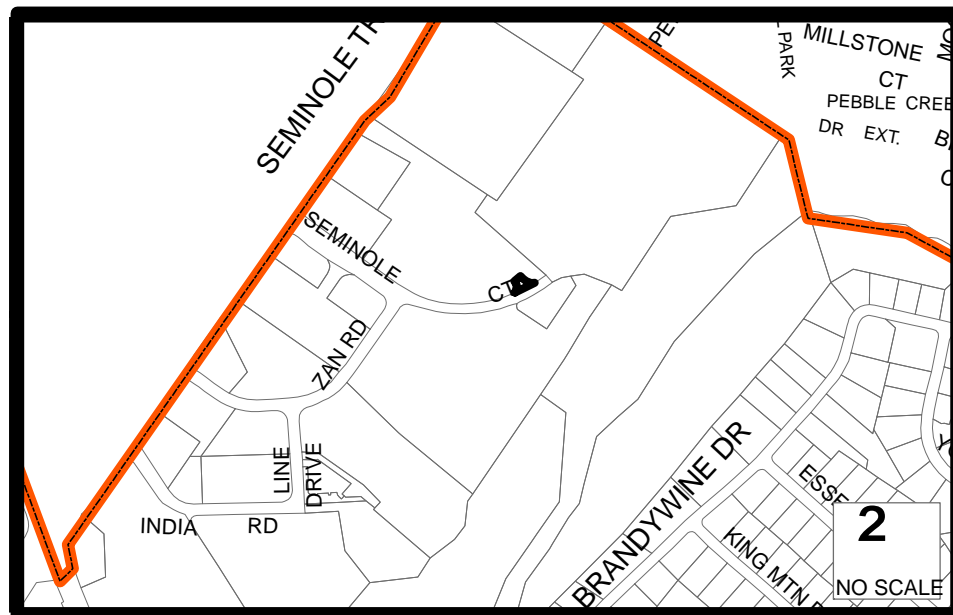
Applicant's Name(s): Towers Limited Partnership, et al FBO/Sequel Investors Limited Partnership. C/O Great Eastern Management Company

Total Square Footage Proposed To Be Closed: Approximately 1,662 sq. ft.

Description of Street or Alley: 105.53 feet long x 47.95 feet wide area located at 200 Seminole Court east of the intersection with Zan Road on City Real Estate Tax Map 41C Parcel 3.1 Block C. The Street or Alley was originally created by a subdivision plat, dated July, 1982.

X **Tax Map Attached**
X **Subdivision Plat, Attached**

Vicinity Map



Executive Summary:

Towers Limited Partnership requests that the City of Charlottesville permanently close a 1662 square foot section of Seminole Court. The street or alley was created in 1982 within the original subdivision plat for Seminole Square. The plat *does not* specifically indicate that the street or alley was dedicated for public use but it is currently incorporated into the City's road network for public use and maintenance.

The subject area currently contains a gravel parking area, landscaping, a fence, a small section of sidewalk, a storm water pipe and drain, and a portion of the existing driveway entrance. This right-of-way closure will benefit the current property owner. The applicant is proposing to build a side addition to the existing building fronting on Seminole Court.

As part of the closure, the Seminole Court real estate will be transferred to the current property owner, Towers Limited Partnership. No permanent easements are necessary as deemed by City Engineering and Public Utilities.

Procedural Matters: Because this street or alley was established by recordation of a subdivision plat, the applicant's request must be reviewed as a proposed vacation of the plat. Following the recordation of a subdivision plat (after any lot within the subdivision has been sold) the plat may be vacated in either of two ways, see Va. Code §15.2-2272.: **(1)** By written instrument signed by all of the owners of lots shown on the plat and by the City (however, if closing the street/alley will not impede or alter access to any lot owners other than those immediately adjacent to the area to be vacated, only the adjacent lot owners are required to sign); or **(2)** By an ordinance enacted by City Council, following notice and a public hearing (the same as for a proposed rezoning). This application seeks an ordinance of City Council.

If this particular street or alley was dedicated for public use (*see note at the end of this staff report*) then the **Planning Commission should review this application to determine whether a termination of the public rights within the street or alley: (1) would result in any public inconvenience, impede any person's access to nearby public streets or adversely affect traffic or nearby public streets, and (2) would be substantially in accordance with the City's Comprehensive Plan. Further, where a proposal requests the City to vacate its rights in public property, the Commission should inquire as to what benefit will accrue to the City/public if the request is granted.**

Relevant Information:

1. Seminole Court is shown in the transportation section of the Comprehensive Plan as part of the City's roadway, pedestrian and transit network. Staff was unable to identify any specific reference to the area proposed for vacation.
2. The majority of the subject area is currently utilized as a parking area and entrance for the property owned by the applicant. There is a small section of sidewalk in the area proposed to be vacated.
3. There are storm drainage facilities located within the subject area. No recorded easements related to these facilities were identified. Public Utilities and Engineering

have reviewed the plat showing the existing utilities and find their location to be acceptable. A utility easement was not deemed necessary or requested by either Department.

4. Vacation of this street or alley would not “land lock” or affect any adjacent parcels other than the applicant. A small section of the sidewalk would however, be on private property. The applicant has maintained that the sidewalk and curb cut will remain. The sidewalk leads to a fence at the rear of the Pepsi Plant and there is another sidewalk on the opposite side of the street that could provide adequate access.
5. According to the City Assessor, the average fair market value of adjoining land averages approximately \$7.75 per square foot. Using this dollar figure, the value of the area which is the subject of the application is \$12,900. Therefore, contributory value of the subject area to the applicant is \$12, 900.
6. Vacation of this street or alley will result in additional development rights for the current property owner, Towers Limited Partnership. Though this property is entirely commercial, theoretically, the addition of the subject area would allow the owner one additional residential unit.
7. The applicant is proposing a 1000 square foot expansion of a commercial building, as shown on the attached plat. The vacation is necessary in order to build the proposed expansion. Although, it appears that a smaller addition is possible without vacating the subject area.

If City Council ultimately approves the applicant’s request, then the property line of the adjacent lot will be adjusted to be consistent with the edge of right-of-way along Seminole Court, as shown on the attached plat. Thereafter, the adjacent property will be free and clear of any rights of the public (other than any utility easements that may be reserved by Council within their ordinance). **In rendering its final decision City Council must consider:**

1. *Public Inconvenience:* Council will consider whether vacation of the Subject Area will result in any public inconvenience, or would deprive the City of property planned for future public use.
2. *Harm to Public Interests.* Council will consider whether vacation of the Subject Area will impede access by any person to nearby public streets, or will adversely impact traffic on adjacent public streets.
3. *Accommodation of Existing or Proposed Business.* Where the vacation is proposed to accommodate the expansion or development of an existing or proposed business, Council may condition the vacation upon the commencement of the expansion or development within a specified period of time. *Reference Va. Code §15.2-2006.*
4. *Reservation of Utility Easement(s).* Where existing City utilities or drainage facilities are located within the Subject Area, Council may reserve an easement to itself for those items.
5. *Compensation to the City.* Council may require the fractional portion(s) of the Subject Area to be purchased by abutting property owner(s). The price shall be no greater than: (i) the fair market value of the Subject Area; or (ii) the contributory value of the Subject Area to the abutting property. ***In the alternative***, Council may approve alternate compensation mutually agreeable to it and the applicant. *Reference Va. Code §15.2-2008.*

Staff Recommendation/Conclusions:

1. Staff concludes that the proposed vacation of this portion of the street or alley would be consistent with the City Council's Policy on Street Closings and would also be consistent with the City's Comprehensive Plan. Staff found no evidence that the subject area is planned for future use.
2. The existing sidewalk in the subject area is proposed to remain, thus staff finds no public inconvenience or impediments to access. If this is a concern to the Planning Commission or City Council, a public access easement may be reserved over the small section of sidewalk to allow permanent public access.
3. The majority of the subject area functions as private property. Therefore, staff finds no benefit in it remaining public and no need to precondition the vacation on the commencement of future development.
4. Utility easements were not deemed necessary by City Staff.
5. The fair market value of the land is \$12, 900. City Council may require compensation if they deem it appropriate.
6. Staff recommends approval of this application.

Suggested Motion(s):

Public street or alley: "I move to certify that the proposed vacation of the 1662 square foot portion of Seminole Court would not result in public inconvenience or impediments to public access and is consistent with the Comprehensive Plan. I move to recommend to City Council that this street or alley be vacated by ordinance."

Note regarding Title

Prior to 1946 a "dedication by plat" vested in the public only a right of passage over areas shown on the plat as streets. The underlying fee title to the property within these areas remained with the developer and then passed to abutting lot owners as the developer's grantees. Title to these platted areas did not/does not pass to the City unless and until the City accepts the dedication, either expressly or by implication (through exercise of dominion and control over the area). Thus, where it appears that a pre-1946 paper street was intended to be dedicated for public use, but the City has never accepted the dedication, the abutting property owners retain title as well as the obligation of maintenance. The abutting property owners may utilize the area for private purposes, but only those consistent with the public right of access (so, for example, the City would not approve: (i) a building permit that would locate a building or permanent structure within the easement area, or (ii) a site plan that proposes use of the area within the easement as a private driveway, in a manner that would alter or impede use of the area in the future for public passage).

In 1946 Virginia adopted the modern Land Subdivision Laws. Thereafter, once an approved plat is legally recorded, fee simple title to (i) areas set apart for streets, alleys or other public uses, and (ii) easements shown for the conveyance of stormwater, domestic water, sewerage, gas, etc., is automatically vested in the City. (However, by statute, nothing obligates the City, upon recordation of a plat, to install or maintain any streets or facilities shown on the plat, unless otherwise specifically agreed by the City). Va. Code 15.2-2265.

Nebulous captions and notes on plats may cause uncertainty as to whether particular streets, easements or facilities shown on them were intended to be dedicated to the public by recordation of the plat, or whether they were simply to be reserved by the developer for possible dedication at a later time. And sometimes circumstances may indicate that a particular street (usually an alley) was intended only to serve the abutting lot owners. Staff will do their best to give you the most complete and accurate information as possible, when an application involves areas to which title and intended use may not be clear.

**AN ORDINANCE
AUTHORIZING THE VACATION OF A PORTION
OF THE 1982 SUBDIVISION PLAT OF BLOCK G
OF THE SEMINOLE SQUARE SHOPPING CENTER**

WHEREAS, by subdivision plat entitled “Subdivision Plat, Block G, Seminole Square”, dated March 22, 1982, hereinafter the “1982 Subdivision Plat”, of record in the Charlottesville Circuit Court Clerk’s Office in Deed Book 430, page 65, an extension of the Seminole Court right-of-way was created and dedicated for public use to the City of Charlottesville; and

WHEREAS, Towers Limited Partnership, the current owner of Seminole Square, has requested permanent closure of a small portion of the Seminole Court right-of-way shown on that plat, described as follows:

All that certain parcel of land, containing 0.038 acres, as shown on a plat entitled “Plat Vacating a Portion of Seminole Court Right of Way”, dated March 16, 2011, attached hereto, said parcel being labeled “Portion of Right of Way to be Vacated” on Sheet 2 of said plat.

WHEREAS, Towers Limited Partnership owns all of the land adjoining the subject right-of-way to be closed, and requests the City to vacate a portion of the 1982 Subdivision Plat pursuant to Virginia Code Sec. 15.2-2272(2), by way of adoption of an ordinance; and

WHEREAS, notice of the proposed closing and vacation of a portion of the 1982 Subdivision Plat and associated public hearing was advertised in accordance with Virginia Code Sec. 15.2-2204, and a joint public hearing by City Council and the Planning Commission was held on May 10, 2011; and

WHEREAS, City staff has reviewed the request and confirmed: (i) that closure of the subject right-of-way will not impede any person’s access to his property or otherwise cause irreparable damage to the owner of any lot shown on the original subdivision plat; (ii) there are no public utilities currently located in the subject area; and (iii) there will be no adverse impact on traffic on nearby public streets, or resulting undesirable traffic conditions in and through the subdivision; and

WHEREAS, City staff recommends approval of the closure of the above-described portion of Seminole Court and vacation of a portion of the 1982 Subdivision Plat; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the Mayor is authorized to sign on behalf of the City an instrument vacating the above-described portion of the 1982 Subdivision Plat, and closing a portion of the Seminole Court right-of-way, platted in 1982 and shown on the attached plat dated March 16, 2011, as authorized by Virginia Code Sec. 15.2-2272(2).

**PLAT VACATING
A PORTION OF
SEMINOLE COURT
RIGHT OF WAY
CONTAINING 0.038 ACRES
SEMINOLE SQUARE
CHARLOTTESVILLE, VIRGINIA**

NOTES:

1. VACATED PORTION OF RIGHT OF WAY IS TO BE ADDED TO, AND BECOME A PART OF TMP 41C-3.1 BLOCK C.
2. NO CURRENT TITLE REPORT PROVIDED. EASEMENTS OTHER THAN THOSE SHOWN HEREON MAY EXIST ON THIS PROPERTY.
3. SUBJECT PROPERTY LIES IN FLOOD ZONE 'C' (AREAS OF MINIMAL FLOODING) AS SHOWN ON FLOOD INSURANCE RATE MAP, COMMUNITY PANEL #510033 0002 C, EFFECTIVE DATE JUNE 15, 1979. LIMITS ARE BASED ON THE PRE-DEVELOPMENT TOPOGRAPHY ADJACENT TO MEADOW CREEK.
4. SITE DATA AND EASEMENTS BASED ON AN ALTA SURVEY DATED JANUARY 09, 2003. NO CURRENT BOUNDARY SURVEY WAS PERFORMED FOR THIS PLAT. SOME UTILITIES WERE FIELD LOCATED ON MARCH 09, 2011. SEE NOTE ON SHEET 3.

CITY APPROVALS:

CHAIRMAN, CITY OF CHARLOTTESVILLE
PLANNING COMMISSION

SECRETARY, CITY OF CHARLOTTESVILLE
PLANNING COMMISSION

OWNERS APPROVAL:

THE REDIVISION OF THE LAND DESCRIBED HEREIN IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES.

TOWERS LIMITED PARTNERSHIP

NOTARY PUBLIC:

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME

THIS _____ DAY OF _____, 20____

My Commission Expires _____

OWNER INFORMATION:

TAX MAP 41C PARCEL 3.1 BLOCK C
TOWERS LIMITED PARTNERSHIP ET AL
GREAT EASTERN MANAGEMENT
PO BOX 5526
CHARLOTTESVILLE, VA 22905

ZONED: HW

CURRENT ZONING SETBACKS:

Front: None required
Side and rear: 10' where adjacent
to any low density
residential district

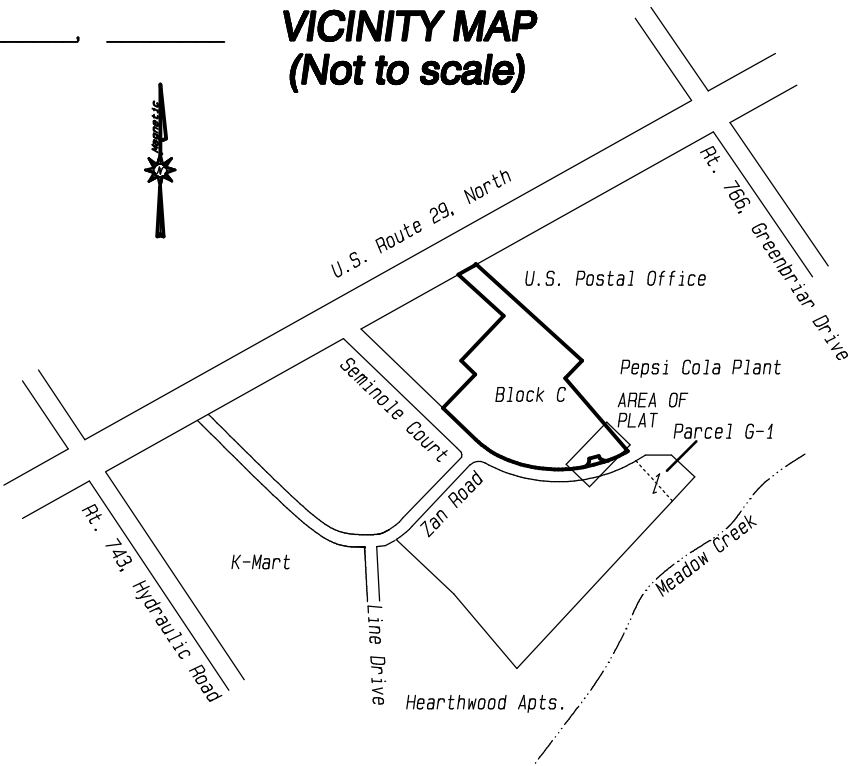
LEGAL REFERENCES:

D.B. 710 p. 165
D.B. 521 p. 021 (plat)
D.B. 470 p. 807 (plat)

Sheet 1 of 3

Q: \MReed\TMPROJ\6053-ROW.pro

**VICINITY MAP
(Not to scale)**



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ENGINEERS, SURVEYORS AND LAND PLANNERS



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SERVING VIRGINIA SINCE 1956

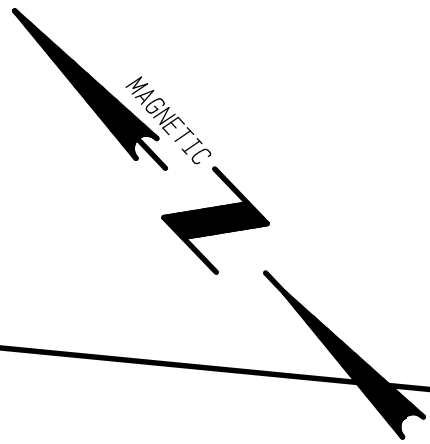


914 MONTICELLO ROAD - CHARLOTTESVILLE, VIRGINIA 22902
PHONE 434-977-0205 - FAX 434-296-5220 - EMAIL INFO@ROUDABUSH.COM

MARCH 16, 2011

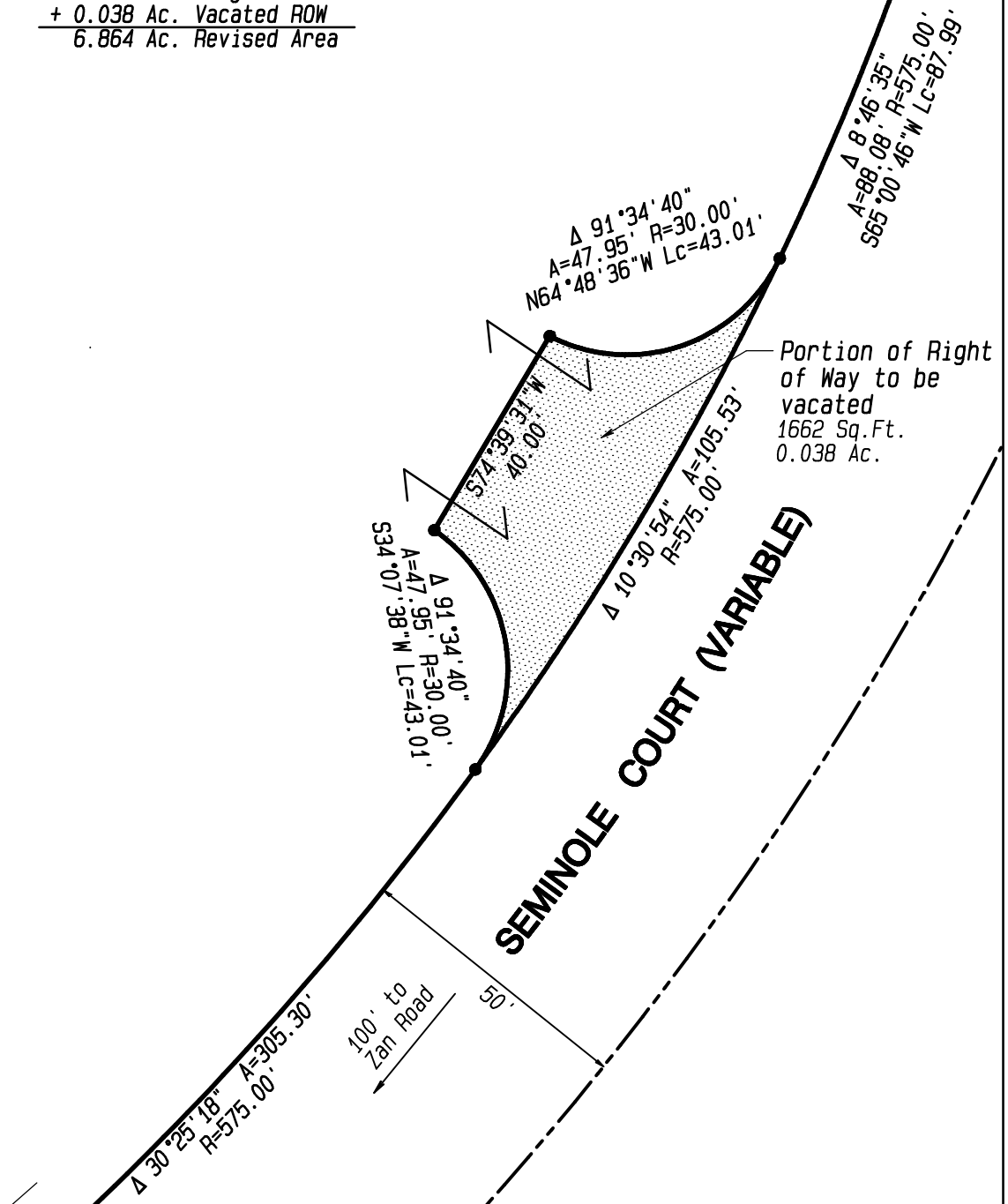
FILE: 6053

TMP 41C - 3
Pepsi-Cola Bottling Company
D.B. 430 p. 082
D.B. 430 p. 065 (plat)



S40°34'59"E 391.73'

TMP 41C - 3.1
Block C
Towers Limited Partnership
D.B. 710 p. 165
D.B. 521 p. 021 (plat)
D.B. 470 p. 807 (plat)
6.826 Ac. Original Area
+ 0.038 Ac. Vacated ROW
6.864 Ac. Revised Area



SCALE 1" = 30'



SCALE IN FEET

Sheet 2 of 3

Q: \MReed\TMPROJ\6053-ROW.pro

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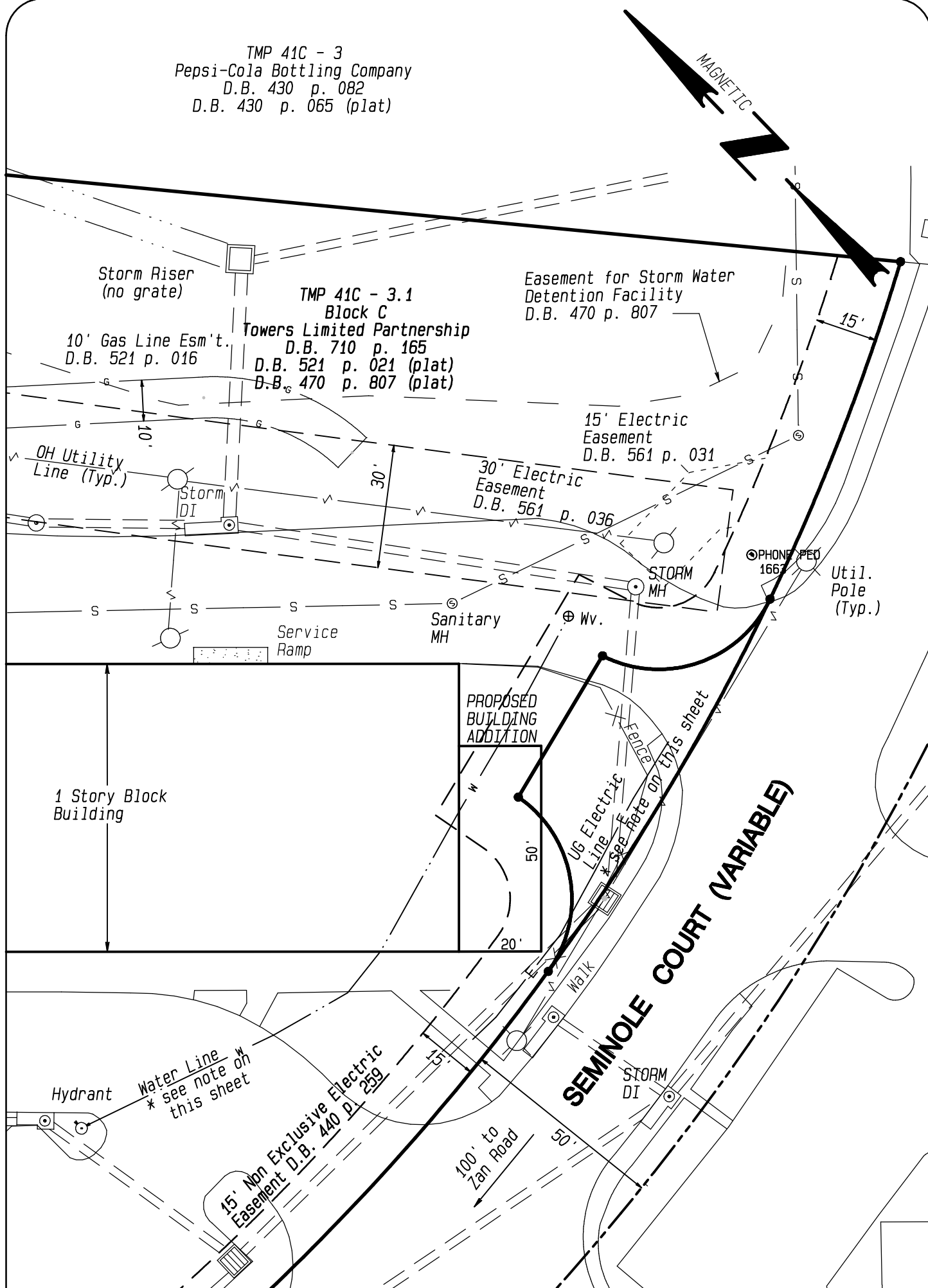


MARCH 16, 2011

SCALE: 1" = 30'

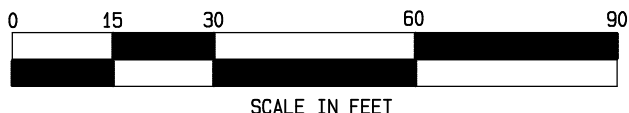
FILE: 6053

TMP 41C - 3
Pepsi-Cola Bottling Company
D.B. 430 p. 082
D.B. 430 p. 065 (plat)



* NOTE: Water and electric lines are based on Miss Utility markings located on March 09, 2011.

SCALE 1" = 30'



SCALE IN FEET

Sheet 3 of 3

Q: \MReed\TMPROJ\6053-ROW.pro

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MARCH 16, 2011

SCALE: 1" = 30'

FILE: 6053

