



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 17, 2023**

**AGENDA TITLE:** Vacation of a 14-foot wide utility easement at 2950 Hawthorn Avenue (formerly known as 3320 28<sup>th</sup> St.) (ADR2023-00109)

Applicant: Nicholas Kuhl, Coburn Architecture

Property Owners:

AB Apartments Venture L.L.C. (Outlot A); and  
Housing Authority of the City of Boulder, Colorado, d/b/a  
Boulder Housing Partners (Lot 3)

**REQUESTING DEPARTMENT / PRESENTER(S)**

Nuria Rivera-Vandermyde, City Manager  
Brad Mueller, Director of Planning & Development Services  
Charles Ferro, Development Planning Senior Manager  
Julie DeFoe, City Planner/Revocable Lease Administrator

**EXECUTIVE SUMMARY**

The purpose of this item is for City Council to consider whether to call up the above referenced application for its review and consideration at a public hearing. The Applicant requests the vacation of a 14-foot wide utility easement that spans Outlot A and Lot 3, Diagonal Court Subdivision located at 2950 Hawthorn Ave. f/k/a 3320 28<sup>th</sup> St. (refer to **Attachment A**).

The subject 14-foot wide utility easement was previously dedicated to the City of Boulder on the final plat of Albertson's-Skaggs-Farber's Subdivision in 1972. The vacation of the utility easement is proposed to accommodate the future construction of Buildings 5 and 6 of the Diagonal Plaza project by Boulder Housing Partners. The utility

easement was replaced by a utility easement that has already been dedicated on the final plat of Diagonal Court Subdivision (TEC2022-00033). There is no existing or anticipated need for the subject easement, as indicated by utility sign-off from Comcast, Century Link, and Xcel.

The proposed vacation was approved by staff on July 21, 2023 (refer to **Attachment B**, Notice of Disposition). This item will be considered for call-up at the August 17<sup>th</sup>, 2023 City Council meeting, which is within the 30 day call-up period.

### **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic:** No economic impact is anticipated.
- **Environmental:** No environmental impact is anticipated.
- **Social:** No social impact is anticipated.

### **OTHER IMPACTS**

- **Fiscal:** None identified.
- **Staff time:** The application for this vacation has been processed through the provisions of a standard easement vacation process and is within normal staff work plans.

### **PUBLIC FEEDBACK**

Notice of the vacation was advertised in the Daily Camera within the 30-day call up period. Staff has received no written or verbal comments opposed to the vacation.

### **BACKGROUND**

The subject property consists of Outlot A (0.30 acres) and Lot 3 (1.32 acres) of Diagonal Court Subdivision which are located south of Hawthorn Ave. (**Figure 1**). The site is located within the Business – Community 1 (BC-1) zoning district. The utility easement to be vacated traverses Outlot A and Lot 3 of Diagonal Court Subdivision located at 2950 Hawthorn Ave. f/k/a 3320 28<sup>th</sup> Street (**Figure 2**).



Figure 1: Vicinity Map

The subject utility easement was previously dedicated to the City of Boulder on the final plat of Albertson's-Skaggs-Farber's Subdivision, recorded in the records of the Boulder County Clerk and Recorder at Reception No. 00044181 (P-4, F-2, #8) on the 21<sup>st</sup> day of November 1972.

This easement vacation is to complete the documentation of vacation of the utility easement that spans Outlot A and Lot 3 from east to west in TEC2022-00033. This easement was shown with the vacated easements on Sheet 4 of the Diagonal Court Subdivision final plat, but the reception number was erroneously omitted from Sheet 4 and from the list set forth in the City Manager's Certificate on Sheet 1. This easement vacation is proposed to accommodate the construction of Buildings 5 and 6 for Boulder Housing Partners, currently under review in TEC2023-00007. The relocated utility easements have been dedicated on the Diagonal Court Subdivision final plat (TEC2022-00033).

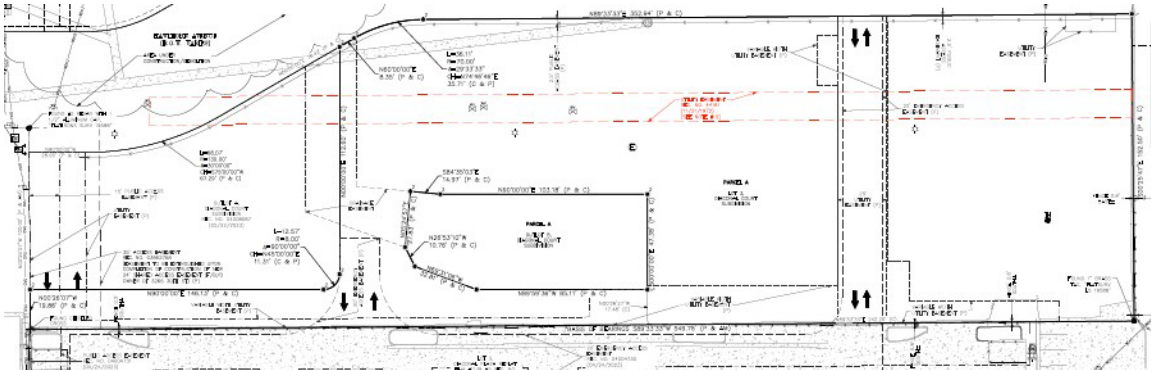


Figure 2: Proposed Vacation

**ANALYSIS**

Pursuant to the procedures for easement vacations set forth in Subsection 8-6-10(b), B.R.C. 1981, the city manager has approved the vacation of the utility easement described above. Staff finds the vacation is consistent with the standards given that there is no existing or anticipated public need for the utility easement for which it was intended, and the relocated easement has already been dedicated, the proposed easement should be vacated.

No vacation of a public easement, nor portions thereof, shall be approved unless the approving agency finds that:

✓ **1. *Change is not contrary to the public interest.***

The easement to be vacated was originally dedicated to the City of Boulder and recorded on the final plat of Albertson’s-Skaggs-Farber’s Subdivision in 1972. The purpose of the easement was to serve the utilities on the property. As part of a recent Diagonal Court Subdivision (TEC2022-00033), the utilities were relocated to better serve the development. This easement to be vacated is no longer required to provide access to the utilities. A new utility easement was dedicated under case no. TEC2022-00033.

✓ **2. *All agencies having a conceivable interest have indicated that no need exists, either in the present or conceivable future, for its original purpose or other public purpose.***

The proposed vacation has been evaluated by the Planning and Public Works Departments and it has been collectively concluded that the public entities would have no conceivable future interest in the utility easement since it is not necessary to provide access to utilities on the property. CenturyLink, Comcast, and Xcel have also approved the request.

**3. *Consistent with the Comprehensive Plan and Land Use Regulations and***

✓ **a. *Failure to vacate the easement would cause a substantial hardship to the use of the property consistent with the Comprehensive Plan and Land Use Regulations; or***

Because there is no existing or anticipated need for the subject utility easement, failure to vacate the easement would prohibit the construction of Buildings 5 and 6 of the proposed project.

     **b. *Would provide a greater public benefit than retaining the property in its present status.***

Not applicable.

City staff approved the vacation of the utility easement on July 21, 2023 (refer to **Attachment B**, *Notice of Disposition*). If the requested vacation is not called up by City Council, then the Deed of Vacation will be recorded (**Attachment A**). If the requested vacation is called up, and subsequently denied, the Applicant will be limited to development on the property outside of the area of the utility easement proposed to be vacated.

**ATTACHMENT(S)**

Attachment A: Draft Deed of Vacation and Exhibit  
Attachment B: Notice of Disposition

For Administrative Purposes Only

Address: 2950 Hawthorn Ave. f/k/a 3320 28<sup>th</sup> Street

Case No. ADR2023-00109

**DEED OF VACATION**

The City of Boulder, Colorado does hereby vacate and release to the present owner of the subservient land, in a manner prescribed by Subsection 8-6-10(b), B.R.C. 1981, a utility easement previously dedicated to the City of Boulder on the final plat of Albertson’s-Skaggs-Farber’s Subdivision, recorded in the records of the Boulder County Clerk and Recorder at Reception No. 00044181 (P-4, F-2, #8) on the 21st day of November 1972, located at 2950 Hawthorn Ave. f/k/a 3320 28<sup>th</sup> Street and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The above easement vacation and release of said easement at 2950 Hawthorn Ave. f/k/a 3320 28<sup>th</sup> Street shall extend only to the type of easement specifically vacated. The within vacation is not to be construed as vacating any rights-of-way, easements or cross-easements lying within the description of the easement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the City Manager after having received authorization from the City Council of the City of Boulder, Colorado.

CITY OF BOULDER, COLORADO

By: \_\_\_\_\_  
Nuria Rivera-Vandermyde , City Manager

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney’s Office

\_\_\_\_\_  
Date

# EXHIBIT "A"

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH,  
RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO  
SHEET 1 OF 2

## EASEMENT VACATION DESCRIPTION

A (14') FOURTEEN FOOT WIDE UTILITY EASEMENT AS DESCRIBED IN THE RECORDS OF BOULDER COUNTY ON THE FINAL PLAT OF ALBERTSON'S-SKAGGS-FARBER'S SUBDIVISION RECORDED AT RECEPTION NO. 00044181 (P-4, F-2, #8) ON NOVEMBER 21, 1972, OVER AND ACROSS PORTIONS OF DIAGONAL COURT SUBDIVISION, RECORDED WITH BOULDER COUNTY ON MAY 22, 2023 AT RECEPTION NO. 04008087, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF LOT 3 OF SAID DIAGONAL COURT SUBDIVISION, TO BEAR SOUTH 89°33'33" WEST, A DISTANCE OF 549.76 FEET BETWEEN BETWEEN A FOUND 1" BRASS TAG STAMPED "FLATSURV LS 19588" AT THE SOUTHEAST CORNER OF SAID LOT 3 AND A FOUND CHISELED "X" IN CONCRETE AT THE SOUTHWEST CORNER OF SAID LOT 3, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT SAID SOUTHEAST CORNER OF LOT 3; THENCE ALONG THE EAST OF SAID LOT 3, NORTH 00°25'47" WEST, A DISTANCE OF 101.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89°33'33" WEST, A DISTANCE OF 489.78 FEET;

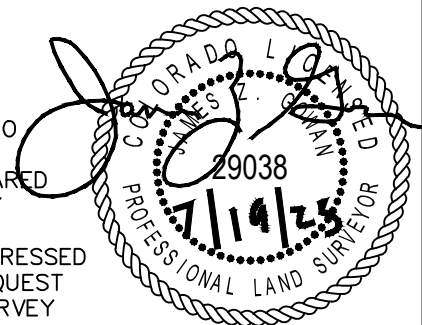
THENCE NORTH 00°26'27" WEST, A DISTANCE OF 14.00 FEET;

THENCE NORTH 89°33'33" EAST, A DISTANCE OF 489.78 FEET TO A POINT ON SAID EAST LINE OF LOT 3;

THENCE ALONG SAID EAST LINE, SOUTH 00°25'47" EAST, A DISTANCE OF 14.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING

SAID PARCEL CONTAINING 6,857 SQUARE FEET OR 0.16 ACRES, MORE OR LESS.

I, JAMES Z. GOWAN, A LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE FOR AND ON BEHALF OF FLATIRONS, INC., THAT THIS PARCEL DESCRIPTION AND ATTACHED EXHIBIT, BEING MADE A PART THEREOF, WERE PREPARED BY ME OR UNDER MY RESPONSIBLE CHARGE, ARE ACCURATE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE AND ARE NOT A GUARANTY OR WARRANTY, EITHER EXPRESSED OR IMPLIED. SAID PARCEL DESCRIPTION AND EXHIBIT WERE PREPARED AT THE REQUEST OF THE CLIENT AND ARE NOT INTENDED TO REPRESENT A MONUMENTED LAND SURVEY OR SUBDIVIDE LAND IN VIOLATION OF STATE STATUTE.



JAMES Z. GOWAN  
COLORADO P.L.S. #29038  
VICE PRESIDENT, FLATIRONS, INC.

JOB NUMBER: 21-75,867  
DRAWN BY: M. VOYLES  
DATE: JUNE 16, 2023

THIS IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED FOR PURPOSES OF TRANSFER OF TITLE OR SUBDIVISIONS OF LAND. RECORD INFORMATION SHOWN HEREON IS BASED ON INFORMATION PROVIDED BY CLIENT. **VACATION**

**Flatirons, Inc.**  
Land Surveying Services

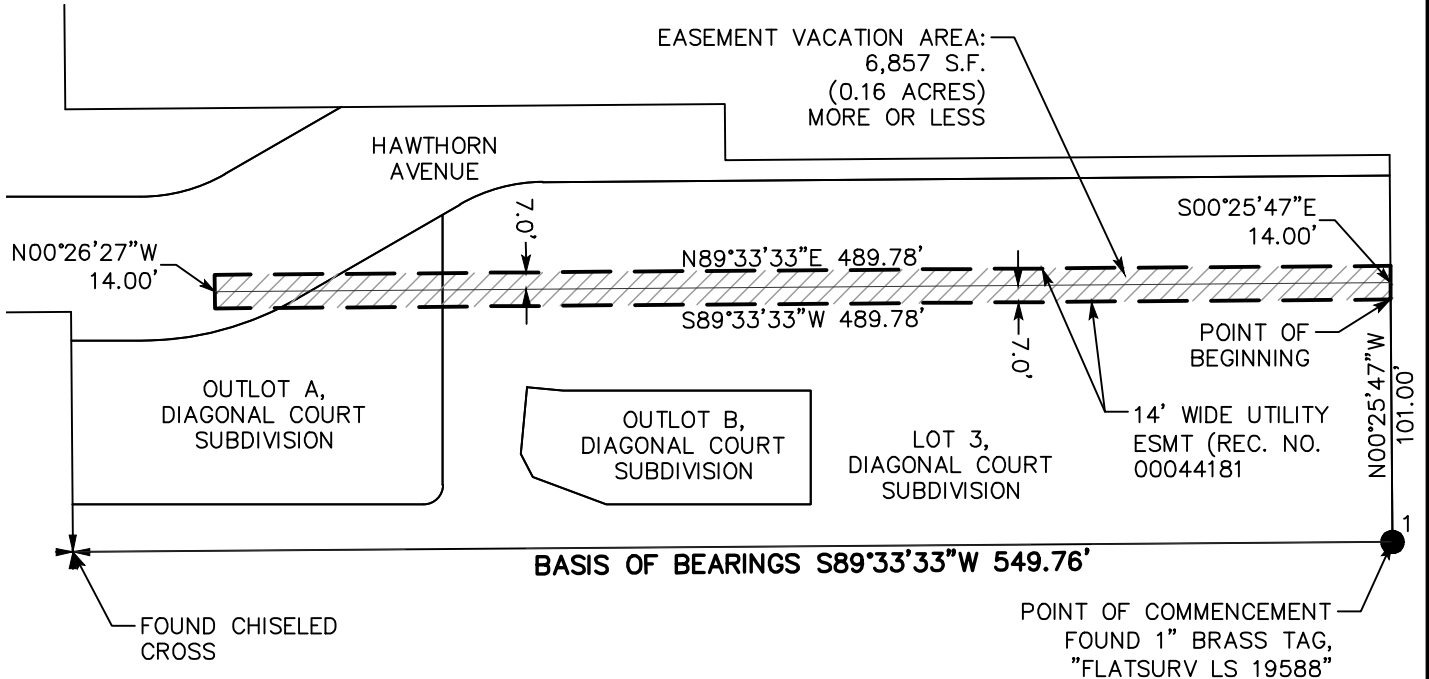


655 FOURTH AVE  
LONGMONT, CO 80501  
PH: (303) 776-1733  
FAX: (303) 776-4355  
[www.FlatironsInc.com](http://www.FlatironsInc.com)

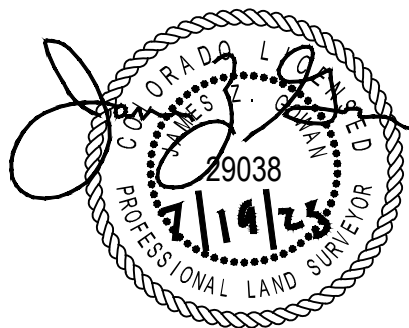
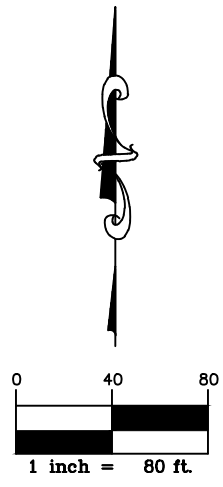
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LOCATED IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 1 NORTH,  
 RANGE 70 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
 CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO  
 SHEET 2 OF 2



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**Flatirons, Inc.**  
 Land Surveying Services

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 LONGMONT, CO 80501  
 PH: (303) 776-1733  
 FAX: (303) 776-4355  
[www.FlatironsInc.com](http://www.FlatironsInc.com)

JOB NUMBER: 21-75,867 DRAWN BY: M. VOYLES DATE: 06/16/2023  
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## City of Boulder Planning & Development Services

### ADMINISTRATIVE REVIEW NOTICE OF DISPOSITION

You are hereby advised that the following action was taken by the Planning Department:

**DECISION:** APPROVED  
**DATE:** July 21, 2023  
**REQUEST TYPE:** Vacation/Easement  
**ADDRESS:** 2950 Hawthorn Ave, f/k/a 3320 28th St  
**APPLICANT:** NICHOLAS KUHL, COBURN PARTNERS  
**CASE NUMBER:** ADR2023-00109  
**PROJECT NAME:** DIAGONAL PLAZA  
**LEGAL DESCRIPTION:** Outlot A and Lot 3, Diagonal Court Subdivision,  
 City of Boulder, County of Boulder, State of Colorado  
**DESCRIPTION:** Proposed utility easement vacation at 2950 Hawthorn Ave., f/k/a 3320 28th St to complete the documentation of vacation of utility easement that spans Outlot A and Lot 3. The vacation was only partially documented on the final plat of Diagonal Court Subdivision and is needed to accommodate the construction of future Buildings 5 and 6 currently under review in TEC2023-00007.

#### FINAL DECISION STANDARDS

Approved as submitted. This application is approved per the criteria for Vacation of Public Easements as set forth in Section 8-6-10, B.R.C. 1981. This approval does not constitute a building permit approval.

This approval is limited to the vacation of a 14-foot wide utility easement. The subject utility easement was previously dedicated to the City of Boulder on the final plat of Albertson's-Skaggs-Farber's Subdivision, recorded in the records of the Boulder County Clerk and Recorder at Reception No. 00044181 (P-4, F-2, #8) on the 21<sup>st</sup> day of November 1972, located at 2950 Hawthorn Ave., f/k/a 3320 28<sup>th</sup> Street.

#### Informational Comments

Pursuant to Section 8-6-10(b), B.R.C. 1981, approval of an easement vacation "is not effective until thirty days after the date of its approval. Promptly after approving the vacation, the manager will forward to the city council a written report, including a legal description of vacated portion of the easement and the reasons for approval. The manager will publish notice of the proposed vacation once in a newspaper of general circulation in the City within thirty days after the vacation is approved. Upon receiving such report and at any time before the effective date of the vacation, the council may rescind the manager's approval and call up the vacation request for its consideration at a public hearing, which constitutes a revocation of the vacation.

This decision is final and may not be appealed. A new request may be considered only as a new application.

By: Julie DeFoe  
 Julie DeFoe, Planning Department