

RESOLUTION NO. 2024-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKEWOOD ACKNOWLEDGING THE OPERATION OF THE NONUSER STATUTE AND RELINQUISHING ANY INTEREST, EXCEPT FOR POSSIBLE UTILTY EASEMENTS, THE CITY MAY HAVE IN UNOPENED RIGHT-OF-WAY AS DESCRIBED HEREIN AND REQUESTED BY ABUTTING PROPERTY OWNER HABERSETZER.

WHEREAS, the City of Lakewood, a Municipal Corporation of the State of Washington, and Jeffrey A. Habersetzer, owner of property located at 9911 Farwest Drive SW, Lakewood, Washington (Property), stipulate and agree that certain property abutting the Property was vacated by operation of law, consistent with a 2005 court judgment; and

WHEREAS, Jeffrey A. Habersetzer (Property Owner), is the current owner of property located at 9911 Farwest Drive SW Lakewood, Washington (Property), Pierce County Parcel Number 7755001110, which is legally described as follows:

Lots 13 and 14, Block 46, The Southern Pacific Town Company's First Addition to Steilacoom, W.T, According to the Plat Recorded in Book 2 of Plats at Page 133, Records of Pierce County, Washington.

WHEREAS, The original nonuser statute operated to vacate a road that was created, but was left unused, 5 years after the road was created. If the road was later incorporated or annexed into a city, the property owner bore the burden of proving that the road vacation occurred during the effective period of the original statute: 1890 through 1904. The original nonuser statute states:

Any county road, or part thereof, which has heretofore been or may hereafter be authorized, which remains unopened for public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same barred by lapse of time.

Laws of 1889-90, ch. 19, § 32.

WHEREAS, In 1909, the Legislature amended the original non-user statute. The amendment excludes roads dedicated by plat, whether the plat was in a city or county, from the vacation provision. The nonuser statute, as now codified states:

Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time: PROVIDED, That this section shall not apply to any highway, road, street, alley, or other public place dedicated as such in any plat, whether the land included in such plat is within or without the limits of an incorporated city or town, or to any land conveyed by deed to the state or to any county, city or town for highways, roads, streets, alleys, or other public places.

RCW 36.87.090.

WHEREAS, 100th Street Southwest in Lakewood, Washington was created as part of the plat of the Southern Pacific Town Company's First Addition to Steilacoom, W.T., as per Plats in Volume 2 of Plats at Page 133, Records of Pierce County, Washington on February 15, 1889 (Southern Pacific Plat); and

WHEREAS, The City of Lakewood incorporated in 1996 and the City's jurisdictional boundaries include the property within the Southern Pacific Plat and the Subject Property; and

WHEREAS, On March 16, 2005, in Pierce County Cause Number 05-2-05691-1, an Order of Judgment was entered based on the Stipulated Findings and Judgment presented by Lee WM. Burnett and the City (2005 Judgment). The 2005 Judgment concluded that a portion of 100th street created as part of the Southern Pacific Plat and abutting properties adjacent to the subject Property had been vacated in 1894 by operation of law and specifically, the Nonuser statute:

That all of that portion of 100th Street Southwest lying between Farwest Drive Southwest and extending easterly to that portion of 100th Street Southwest previously vacated abutting the Plaintiff's Property was not used by the public during the period of time from 1889-1894.

....

That all of that portion of 100th Street Southwest lying between Farwest Drive Southwest and extending easterly to that portion of 100th Street Southwest previously vacated abutting the Plaintiff's Property was vacated by operation of law in 1894.

*2005 Judgment, attached as **EXHIBIT A**.*

The 2005 Judgment describes the properties adjacent to the Property as follows:

Lots 11 & 12 and 15 & 16 in Block 46 of The Southern Pacific Town Company's First Addition to Steilacoom, W.T., as per Plat recorded in Volume 2 of Plats, at Page 133, records of Pierce County Auditor.

WHEREAS, the City has received a request from the Property Owner to acknowledge that any rights the City may have to the property originally dedicated in 1889 as right-of-way abutting the Property have been vacated by operation of law; and

WHEREAS, in consideration for reimbursing the City for its administrative costs to review the request, the City is willing to acknowledge operation of the non-user statute on the unopened right-of-way abutting the Property and relinquish all interest in the unopened right-of-way; and

WHEREAS, the City Clerk or designee has provided not less than 20 days' notice to the time, place and purpose of the hearing for the this resolution by A) publishing written notice once in the City's official newspaper; B) posting a placard in a conspicuous place at each end of the street or alley sought to be relinquished; C) mailing written notice to all owners of property abutting the street or alley proposed to be relinquished, as shown on the records of the Pierce County Assessor; and D) mailing written notice to all owners of property which lie within 300 feet beyond the street or alley to be relinquished, measuring in both directions from the area to be relinquished.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council of the City of Lakewood hereby acknowledges that the 2005 Judgment described above determined that a portion of the right-of-way created in the Southern Pacific Plat and abutting Lots 11, 12, 15 and 16 of the Southern Pacific Plat "was vacated by operation of law in 1894."

Section 2. The City Council of the City of Lakewood hereby acknowledges that the Property now under consideration is Lot 13 and 14 of the Southern Pacific Plat and is located between the lots benefiting from the 2005 judgment described above, and further, that the portion of the right-of-way abutting the Property, like the portion of the right-of-way abutting the properties benefiting from the 2005 Judgment, was vacated by operation of law pursuant to the non-user statute.

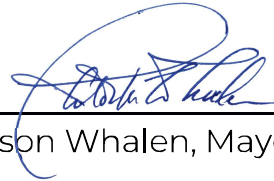
Section 3. The City Council of the City of Lakewood hereby relinquishes all interest that the City may have in that portion of unopened right-of-way described in **EXHIBIT B**, attached and incorporated herein.

Section 4. This resolution does not affect any third party's rights in the right-of-way described above, if any.

Section 5. Severability. If any sections, sentence, clause or phrase of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property or circumstance, such invalidity or unconstitutionality or inapplicability shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Resolution or its application to any other person, property or circumstance.

PASSED by the City Council this 1st day of April, 2024.

CITY OF LAKEWOOD



Jason Whalen, Mayor

Attest:



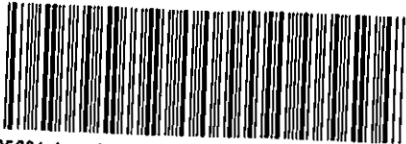
Briana Schumacher, City Clerk

Approved as to Form:

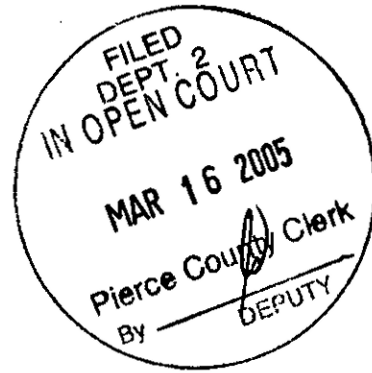


Heidi Ann Wachter, City Attorney

EXHIBIT A



05-2-05691-1 22734209 JDS 03-18-05



3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

LEE WM. BURNETT,

Plaintiff,

vs.

CITY OF LAKEWOOD, a Washington city,

Defendant.

NO. 05-2-05691-1

STIPULATED FINDINGS AND
JUDGMENT

IT IS HEREBY stipulated and agreed by and between the undersigned attorney for the plaintiff and the undersigned attorney for the defendant that the following findings and judgment may be entered by the court in the above-entitled action.

I.

100th Street Southwest was created as part of the plat of the Southern Pacific Town Company's First Addition to Steilacoom, W.T., as per Plats in Volume 2 of Plats at Page 133, Records of Pierce County, Washington on February 15, 1889.

II.

All of that portion of 100th Street Southwest lying between Farwest Drive Southwest and extending easterly to that portion of 100th Street Southwest previously vacated abutting

STIPULATED FINDINGS AND
JUDGMENT - 1

ORIGINAL

LAW OFFICES
GORDON, THOMAS, HONEYWELL
MALANCA, PETERSON & DAHEIM, LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 620-6500 - FACSIMILE (253) 620-6585

1 Plaintiff's Property was not open during that period of time from 1889 to 1894, which
2 Plaintiff's Property is legally described as follows:

3 Lots 11 & 12 and 15 & 16 in Block 46 of The Southern Pacific
4 Town Company's First Addition to Steilacoom, W.T., as per
5 Plat recorded in Volume 2 of Plats, at Page 133, records of
6 Pierce County Auditor.

7 Situate in the County of Pierce, State of Washington.
(The "Plaintiff's Property").

8 III.

9 All of that portion of 100th Street Southwest lying between Farwest Drive Southwest
10 and extending easterly to that portion of 100th Street Southwest previously vacated abutting
11 Plaintiff's Property was vacated by operation of law in 1894.

12 IV.

13 That the public lost any easement rights to all of that portion of 100th Street Southwest
14 lying between Farwest Drive Southwest and extending easterly to that portion of 100th Street
15 Southwest previously vacated abutting Plaintiff's Property in 1894 when the street was
16 vacated.

17 V.

18 Pursuant to the foregoing, all of that portion of 100th Street Southwest lying between
19 Farwest Drive Southwest and extending easterly to that portion of 100th Street Southwest
20 previously vacated abutting Plaintiff's Property was vacated in the manner described above.

21 NOW, THEREFORE, IT IS HEREBY:

22 ORDERED, ADJUDGED AND DECREED That all of that portion of 100th Street
23 Southwest lying between Farwest Drive Southwest and extending easterly to that portion of
24 100th Street Southwest previously vacated abutting Plaintiff's Property was created as part of
25
26

1 the plat of Southern Pacific Town Company's First Addition to Steilacoom, W.T., as per Plat
2 recorded in Volume 2 of Plats at Page 133, Records of Pierce County, Washington, it is
3 further

4 ORDERED, ADJUDGED AND DECREED That all of that portion of 100th Street
5 Southwest lying between Farwest Drive Southwest and extending easterly to that portion of
6 100th Street Southwest previously vacated abutting Plaintiff's Property was not used by the
7 public during the period of time from 1889-1894, it is further

8 ORDERED, ADJUDGED AND DECREED That all of that portion of 100th Street
9 Southwest lying between Farwest Drive Southwest and extending easterly to that portion of
10 100th Street Southwest previously vacated abutting Plaintiff's Property was vacated by
11 operation of law in 1894, it is further

12 ORDERED, ADJUDGED AND DECREED That the public lost any easement rights
13 to all of that portion of 100th Street Southwest lying between Farwest Drive Southwest and
14 extending easterly to that portion of 100th Street Southwest previously vacated abutting
15 Plaintiff's Property in 1894 when the street was vacated, it is further

16 ORDERED, ADJUDGED AND DECREED That simultaneous with the effectiveness
17 of the foregoing described vacation, fee simple title to all of that portion of 100th Street
18 Southwest lying between Farwest Drive Southwest and extending easterly to that portion of
19 100th Street Southwest previously vacated abutting Plaintiff's Property vested in the Plaintiff.
20 A copy of an Assessor's map identifying the property being vacated by this judgment is
21 attached as **Exhibit "A,"** which is incorporated and made a part hereof by this reference. In
22 the event of any conflict between the foregoing legal description of the property being
23 vacated and the attached Exhibit "A," the latter shall prevail.

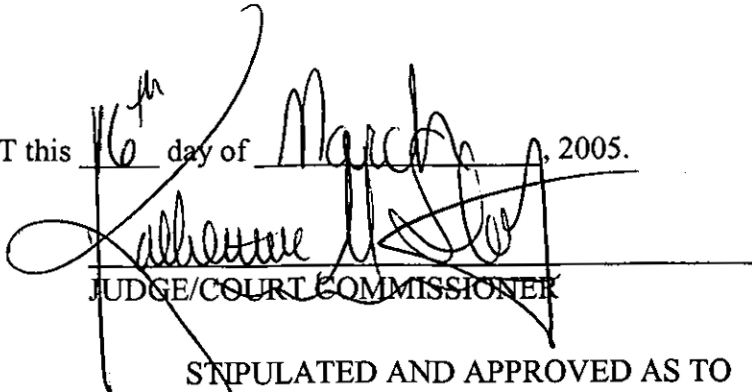
24
25
26
STIPULATED FINDINGS AND
JUDGMENT - 3

[1300834 v5]

LAW OFFICES
GORDON, THOMAS, HONEYWELL
MALANCA, PETERSON & DAHEIM, LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 620-6500 - FACSIMILE (253) 620-6565

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DONE IN OPEN COURT this 16th day of March, 2005.



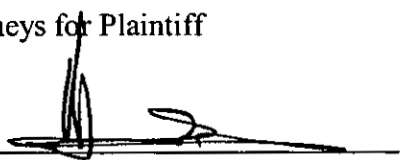
JUDGE/COURT COMMISSIONER

PRESENTED BY:

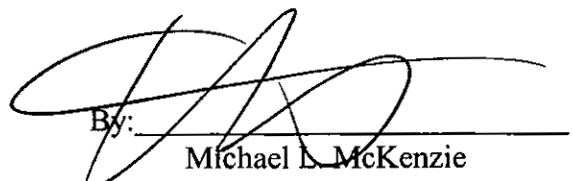
STIPULATED AND APPROVED AS TO
FORM AND CONTENT AND NOTICE
OF PRESENTMENT WAIVED:

GORDON, THOMAS, HONEYWELL,
MALANCA, PETERSON & DAHEIM,
LLP
Attorneys for Plaintiff

HEIDI A. WACHTER, CITY ATTORNEY
THE CITY OF LAKEWOOD

By: 

Terry L. Brink
WSBA No. 18228

By: 

Michael L. McKenzie
WSBA No. 23258
Assistant City Attorney

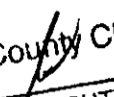
FILED
DEPT. 2
IN OPEN COURT
MAR 16 2005
Pierce County Clerk
By  DEPUTY

EXHIBIT B

CITY OF LAKEWOOD
10/27/2023
RECEIVED

EXHIBIT A

PAGE 1

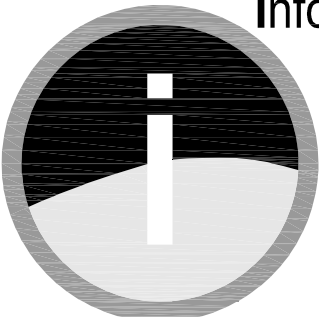
RIGHT OF WAY VACATION LEGAL DESCRIPTION

THE NORTH HALF OF 100TH ST SW ADJOINING AND ABUTTING LOTS 13 AND 14, BLOCK 46, THE SOUTHERN PACIFIC TOWN COMPANY'S FIRST ADDITION TO STEILACOOM, W.T., ACCORDING TO THE PLAT RECORDED IN BOOK 2 OF PLATS AT PAGE 133, RECORDS OF PIERCE COUNTY, WASHINGTON.

CONTAINING 1500 SQUARE FEET/ 0.034 ACRES.

SITUATE IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

A PORTION OF THE NE 1/4 OF THE NE 1/4 OF SECTION 5, T19N, R2E, W.M.

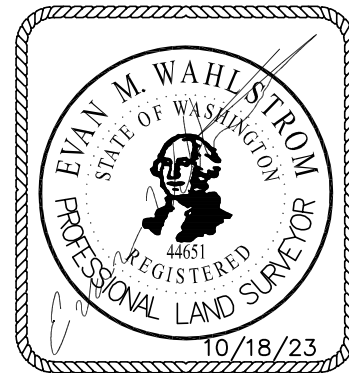


informed land survey

PO Box 5137
Tacoma, WA 98415-0137

Phone: 253-627-2070
admin@i-landsurvey.com
www.i-landsurvey.com

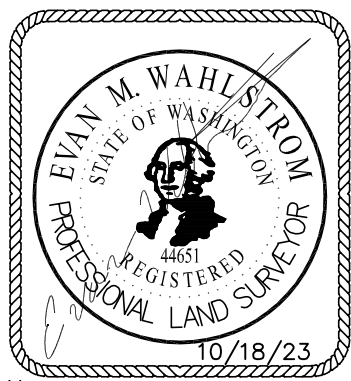
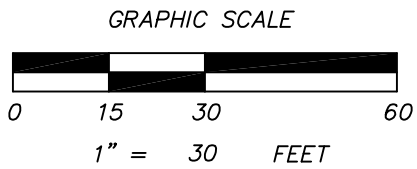
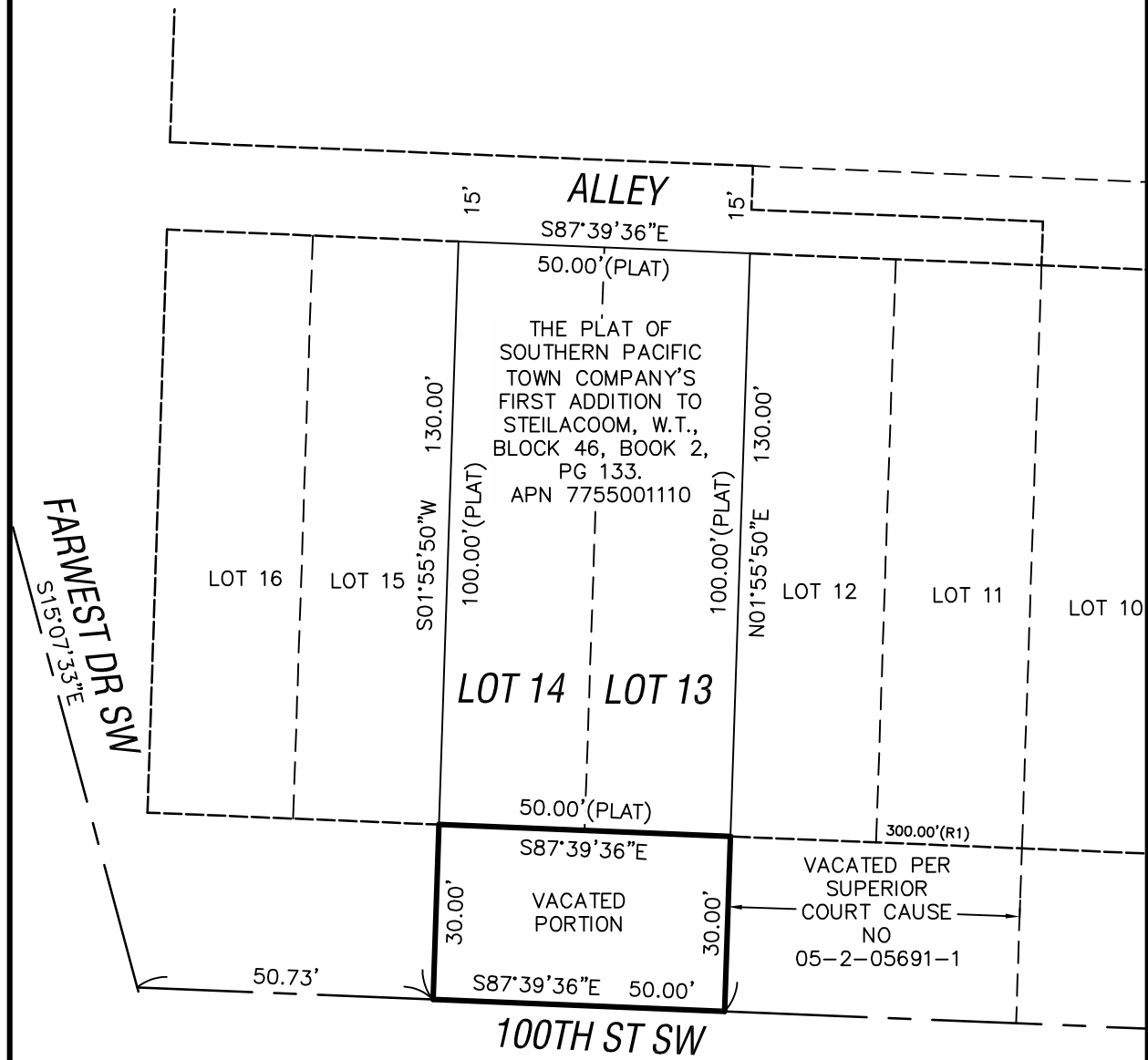
LAND SURVEYING • MAPPING • CONSTRUCTION LAYOUT



CITY OF LAKEWOOD
10/27/2023
RECEIVED

EXHIBIT A

PAGE 2



A PORTION OF THE NE 1/4 OF THE NE 1/4 OF SECTION 5, T19N, R2E, W.M.