72417-7

72417-7

No. 72417-7

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

CITY OF WOODINVILLE,

Plaintiff/Respondent,

v.

THE FOWLER PARTNERSHIP,

Defendant/Appellant.

APPELLANT'S REPLY BRIEF

Michael J. Bond, WSBA # 9154
SCHEDLER BOND, PLLC
2448 76th Avenue SE, Suite 202
Mercer Island, WA. 98040
Telephone: 206-257-5440
Attorneys for The Fowler Partnership

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Table of Cases

TABLE OF AUTHORITIES

Page

Constitutional Provisions

Statutes

TABLE OF AUTHORITIES

Page

Rules

Other Authorities

I. INTRODUCTION

The City of Woodinville's Response is long on "they are wrong and we are right" and short on legal authority, admissible evidence, or citations to the record to support its position. Instead, Woodinville mis-states Fowler's argument and asks the court to draw inferences against the non-moving party. The Response also notably fails to respond to several issues and authorities.

II. REPLY ARGUMENT

A. Reply to statement of alleged facts.

Woodinville's Response Brief violates RAP 10.3(a)(5) numerous times by failing to provide a citation to the record for its factual statements; Woodinville distorts the evidence, and it makes up facts out of whole cloth. For example, footnotes 3 and 5 make bold statements of fact and conclusion without citation to the record. Indeed, Woodinville relies heavily on an alleged "King County zoning law" despite the fact that no such zoning code is in the record, nor is the text of a zoning code attached to its brief or set forth in its Brief as required by RAP 10.4(c). Every unsupported assertion of fact should be disregarded.

Woodinville asserts the covenant was recorded "in apparent compromise and agreement" (Resp. Br. at 3) but there is no citation to the record that says any such thing and there is no evidence of such a

"compromise." On summary judgment, all reasonable inferences run in favor of the non-moving party: Fowler. *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). The Lot Line Adjustment was revised to delete the requirement for an immediate dedication, and the reasonable inference from that fact is that the county had no present need for a right of way as a result of the proposed development, and it did not want to incur the cost to pay for the right of way and maintain it.

Woodinville falsely claims "after its incorporation in 1993, Woodinville placed street signage, traffic control devices, a stop sign and painted stop bar on the roadway." Res. Br. at 4, citing CP 247-304. The CP citation is a Declaration of Greg Rubstello, Woodinville's attorney, and nothing in the declaration or its attachments supports the claim made in its brief. Woodinville's Public Works director, Thomas Hansen submitted two declarations and neither of them say anything in support of that assertion. CP 237-246, 368-510. The fact is 173rd was a private roadway used only by Fowler's tenants and customers until its dead end was opened in 2001. CP 115, 525. This record says nothing about who placed street signage, traffic control devices, a stop sign and painted stop bar on the roadway or when that happened.

Woodinville asserts that King County Ordinance 33 (adopted in 1987), which refers to 172nd Place, really means 173rd NE, again with no citation. Resp. Br. at 5 fn 5. To be fair, Mr. Hansen said the same thing in his declaration. CP 238. But he did not start work at Woodinville until 2009, and he has no admissible personal knowledge. CR 56 instructs us that summary judgment may be granted only on the basis of admissible evidence. No admissible evidence supports the bald assertion that 172nd Place is in fact 173rd NE. And the laws of physics show his assertion is not possibly true. The covenant covers a right of way of not more than 50 feet to be known as 173rd; Ordinance 8114 refers to a road known as 172nd Place which will be not less than 72 feet wide. CP 383.

Citing his own testimony, Mr. Rubstello purports to authenticate and identify the provenance of an alleged comment on the building plans. Resp. Br. at 2, citing CP 284-85. But he is not competent to offer that testimony; Fowler properly objected to it in the trial court (CP 313), and the testimony should not have been considered then or now on any issue.

B. A promise to execute a deed is not a conveyance.

A major premise of Woodinville's Response is the assumption that there is no legal difference between the covenant, which offered to execute a dedication deed, and the dedication deed itself. If Woodinville's premise was correct, then there would have been no reason to demand a

deed, or to file suit, or seek summary judgment. It is undisputed that no dedication was made. As the Public Works Director testified, "it [the 50 foot strip of land in issue] looked like private property." CP 43.

A conveyance is a written instrument by which an estate or interest in real property is created, transferred, mortgaged or assigned. RCW 65.08.060. A deed conveys an interest in real estate. RCW 64.04.010. The covenant conveyed nothing. It created no interest in the property. It was not a deed. Because no interest in the property was created, transferred, mortgaged or assigned when the covenant was recorded, after Fowler bought the property in 1991, he paid all real estate taxes and the costs of maintenance. And because no interest in the roadway was ever conveyed, when asked to maintain the landscaping or pay a claim arising from the property, Woodinville declined by asserting it was not their property.

C. Woodinville has no rights under the covenant.

Led astray by the incorrect assumption that an offer to execute a conveyance is the conveyance, Woodinville appears to completely misunderstand Fowler's arguments that the covenant was 1) revoked by operation of law and, 2) does not run with the land.

Woodinville cited no authority in opposition to Fowler's argument that the rule applied in *City of Spokane v. Security Savings Society*, 82 Wash.

91, 143 P. 435 (1914) and *Smith v. King Co.,* 80 Wash. 273, 141 P. 695 (1914) governs this issue. In those decisions, the court held that a conveyance of dedicated property before the city or county accepted the dedication revokes the dedication as a matter of law. Absent any contrary authority, the City's "slip of the tongue" points the way to the correct outcome. Woodinville argued, "The Covenant and the promise made therein to dedicate the south 50 feet for a public road remained ***unenforceable*** following conveyance of the..." property. (Resp. Br. at 9, emphasis added).

As for the real property law governing covenants that run with the land, the rule is that a covenant does not run with the land unless the covenant was an enforceable contract between the original parties, and there was privity of estate. *Deep Water Brewing, LLC v. Fairway Resources Ltd.*, 152 Wn.App. 229, 215 P.3d 990 (Div. 3 2009).

Woodinville failed to cite any contrary authority and failed to distinguish or rebut the holding of *Unlimited v. Kitsap County*, 50 Wn. App. 723, 750 P.2d 651 (1988). The court in *Unlimited* held that Kitsap County's effort in 1985 to extract a right of way for some undetermined future need without compensating the land owner was an unconstitutional taking. The court's holding applies in this case where the facts are nearly indistinguishable. If King County had attempted in 1985 to do what

Kitsap County attempted to do in 1985, that would have been an unconstitutional extraction, and it remains so today. Woodinville has no greater rights to take property without compensating the land owner today than King County had in 1985.

Woodinville ignored the court's holding in *Deep Water Brewing, LLC v. Fairway Resources Ltd.*, supra. The court ruled, "Horizontal privity requires the transfer of some interest in land, *other than the covenant itself*, between covenantor and covenantee in connection with the making of the covenant." *Id.*, 152 Wn.App. at 260, 261, emphasis added. This is basic property law: there must be a conveyance of an interest in the property *other than the covenant*. Here there was no transfer of any interest at all, and that means the covenant does not run with the land.

Because under basic property law the covenant was revoked when the property was conveyed to Fowler and the covenant did not run with the land, Woodinville has no rights to enforce it. If it wants the property, Woodinville must pay for it.

D. The covenant contemplated compensation would be paid when the dedication was sought.

Woodinville's reliance on *Wilkinson v. Chiwawa Comm. Ass'n.*, 180 Wn.2d 241 (April 2014) is misplaced, and the argument that Fowler wants the court to re-write the covenant is wrong. While the Court did say, "In

determining the drafter's intent, we give covenant language its ordinary and common use and will not construe a term in such a way so as to defeat its plain and obvious meaning," the Court also instructed us to, "consider the instrument in its entirety." *Id.* internal citations omitted. Then, citing the *ratio decidendi* for its holding, the Court also said, "The lack of an express term with the inclusion of other similar terms is evidence of the drafters' intent." That rule is fatal to Woodinville's claim.

In *Wilkinson*, homeowners in a development that was subject to restrictive covenants argued about whether the association could impose restrictions on the use of the residences for short term rentals. The association's board adopted a rule prohibiting rentals of less than 30 days, and the owners who wanted to rent their property on shorter terms contested the new rule, arguing that the covenant did not allow any restriction on the duration of rentals. The Court noted that the rules of prohibited use were lengthy, showing that the covenant's drafters knew how to restrict uses if they so chose. Then, noting the rule that "[t]he lack of an express term with the inclusion of other similar terms is evidence of the drafters' intent," the Court concluded that a rule limiting the size of "For Rent" signs and nothing more was evidence of the lack of intent to restrict the duration of any rental. That logic should be applied here.

The covenant does not explicitly say the deed shall be granted "with" or "without" compensation. But when considered in its entirety, the covenant does include language stating that "said road development may be initiated by the formation of a County Road Improvement District pursuant to RCW 36.88," and RCW 36.88 provides that when the County proceeds under RCW 36.88, it shall obtain the property by "gift, purchase or by condemnation". Two of those means to acquire property require payment. The inclusion of RCW 36.88 in the covenant is evidence of the drafter's intent that compensation would be paid if the County asked for the dedication.

Such a construction of the covenant language would also discharge the admonition against construing a covenant in such a way so as to defeat its plain and obvious meaning. As argued in the opening brief and above, an extraction of a right of way where the development will cause no adverse impact on the public interest requires compensation; otherwise it becomes an unlawful and unconstitutional taking. *Unlimited v. Kitsap Co.*, supra. The court should presume the County would have acted consistently with the Washington Constitution. *State ex rel. Campbell v. Case*, 182 Wash. 334, 47 P.2d 24 (1935). ("It is a well-settled rule that, where a statute is open to two constructions, one of which will render it constitutional and the other unconstitutional, the former construction, and not the latter, is to

be adopted."). By acting lawfully, the County would have compensated the landowner if and when it sought the dedication. Any other construction would defeat the plain and obvious purpose of the covenant.

E. Fowler is not collaterally attacking the covenant.

1. Fowler has no complaint about the covenant.

Fowler has no complaint about the covenant, and Woodinville's mis-direction about the issue presented should be rejected. Fowler's complaint is directed to Woodinville's attempt to enforce the covenant in violation of Washington Constitution Article I § 16 and the U.S. Constitution, Fifth Amendment, by insisting it need not compensate Fowler for the property. Under the facts of this case, the Constitutions require Woodinville to compensate the property owner when it takes the property.

2. There was no adverse impact on the public interest.

The facts of this case show, without dispute, that there was no adverse impact on the public interest resulting from the approval of the Lot Line Adjustment. CP 46. Woodinville's 'hail Mary' assertion that the required nexus is shown by the developer's intent to build a road is pure sophistry.

First, the required nexus, if one exists, is between the development and its impact on the public interest. Usually that impact is shown by a traffic impact study, as shown in *Sparks v. Douglas Co.*, 127 Wn.2d 901, 904 P.2d 738 (1995). There is no evidence such a study was conducted when

the development here was approved. CP 46 (Hansen dep. at 46). And obviously, the development did not impose on the County a need for a public road, or they would have asked for an immediate dedication. Second, the road was private; it dead ended at a landscaped berm until 2001 and, before 2001, the road was used exclusively by the tenants and vendors of the Woodinville City Center offices. CP 115, 525. Because there was no nexus between the development of the Woodinville City Center and an adverse impact on the public interest, demanding a dedication of a portion of the property for a right of way requires compensation.

3. No complaint about the covenant was ripe for review.

Asserting only that Fowler takes the facts "out of context" (Resp. Br. at 16), without explaining how, Woodinville failed to cite any contrary authority or distinguish the decisions holding that a government's land use decisions are not ripe for review until the government has made a final decision. *Saddle Mountain Minerals, LLC v. Joshi*, 152 Wn.2d 242, 95 P.3d 1326 (2004); *Williamson County Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186, 105 S.Ct. 3108, 3116, 87 L.Ed.2d 126 (1985). The final decision here was the decision to demand the dedication without paying compensation, and that did not occur until Woodinville made that decision.

F. The covenant caused no loss of value.

Again, violating RAP 10.3(a)(5), Woodinville failed to cite the record to support its bald assertion that, "the covenant when recorded immediately reduced the fair market value" of the property. Resp. Br. at 12. Instead, Woodinville concocted an argument based on the *second*, revised appraisal, which alleges a value as of December 2013.

First, to show a loss of value, Woodinville would have to show the value of the property before and after the covenant. WPI 150.06. While that is not the exclusive method of determining value, it is the simplest. *State of Washington v. Paul Bunyan Rifle and Sportsman's Club. Inc.*, 132 Wn.App. 85, 130 P.3d 414 (Div. 2 2006). The date of value is the date the agency acquired the property. WPI 150.06. Woodinville's alleged *revised* appraisal meets neither of these criteria. No before or after value is stated, and the date of value is December 2013 while Woodinville argues the public acquired its rights in 1985.

Second, according to Woodinville's Public Works Director, Mr. Hansen, the original appraisal took into account all matters shown on the title report, including the covenant as to the south 50 feet of the property. CP 388. That appraisal showed the value of the south 50 feet, as of December 2013 was $592,500. CP 158. When Mr. Hansen instructed the

appraiser that Fowler was entitled to no compensation (CP 386), only then did he obligingly revise his appraisal of the value of the property to less than zero, noting, "we are assuming that the legal position of the City of Woodinville is correct." CP 205. And, "we are assuming the City of Woodinville's position that the owner must dedicate, without compensation, the land with the developed road on the southern border of this property is correct." CP 221. Woodinville's appraisals are no evidence whatever of a loss of value upon the recording of the covenant. If anything, they show only that as of December 2013, the property Woodinville seeks had a value of $592,500.

G. There was no common law dedication.

Woodinville mis-cites and mis-uses the *Real Property Deskbook* at Resp. Br. 21-22. There was no common law dedication.

A common law dedication may arise expressly or by implication. An express common law dedication may arise when there has been a defective statutory dedication or a defective deed. *Real Property Deskbook* at 3-8, 3-9. Neither of those facts exist here.

According to the *Deskbook*, two elements must be present to establish an implied, common-law dedication: 1) an unequivocal act by the fee owner establishing an intention to dedicate and 2) reliance on the act by the public, indicating public acceptance. *Id.*, citing, *Karb v. City of*

Bellingham, 61 Wn.2d 214, 218-19 (1963), *Stevens Co. v. Burrus*, 61 Wn.2d 420, 424, (1935), and *City of Seattle v. Hill*, 23 Wash. 92, 96-97 (1900). *Deskbook*, at §3.4(2), page 3-9. It also says, "occasional use of a strip by neighbors, with the consent of the owners, is insufficient to establish an intention to dedicate and acceptance of the strip as a public street." *Id.*, *citing Forrester v Fisher*, 16 Wn.2d 325, 335 (1943).

The cited cases show no common law dedication occurred here. In *Karb v. City of Bellingham*, the City was the fee owner of the property in question, and Court declared there was no common law dedication because there was no unequivocal act showing the City as fee owner had, in fact, dedicated the property for public use. Here, Woods Associates owned the property until 1991 and no dedication was made while they owned the property. Not only was there no dedication in fact, the roadway was private and dead-ended until 2001.

Stevens Co. v. Burrus does not help Woodinville, either. The Court said;

> Two things are necessary to constitute a valid common-law dedication, namely: First, an intention on the part of the owner unequivocally to devote his land, or an easement in it, to a public use, followed by some act or acts clearly and unmistakably evidencing such intention; and, second, an acceptance of the offer by the public.

There had been some talk and a survey for a public road, but one was never opened. Neither element was met and the claim for common law dedication was denied.

Lastly, *City of Seattle v. Hill* is no help to the City. In 1889, the owner of 100 acres in what is now the middle of Seattle platted the 100 acre tract with lots on either side of what became Washington Street. The City improved the street and levied the owners a fair share of the cost of the improvements. The land owner contested the levy arguing that the plat was never recorded and therefore, they argued, there was no dedication and no reason to pay for the improvements. The Court would have none of it and upheld the levy because the public road was clearly shown on the plat. Here there has been no dedication at all, and the construction plan shows 173rd as a private drive dead-ending at a landscaped berm. CP 525.

H. Adverse possession is not shown.

First, Woodinville mis-uses the *Deskbook;* the authors of the *Deskbook* did **not** say, "public use need not continue for the 10 years required for adverse possession to establish a common law dedication by public use." Resp. Br. at 22. No decision or treatise removed the 10 year period that must exist before a claim of adverse possession will be upheld.

Adverse possession does not occur unless the claimant shows its use was (1) open and notorious, (2) actual and uninterrupted, (3) exclusive,

and (4) hostile. *Gorman v. City of Woodinville* 175 Wn.2d 68, 72, 283 P.3d 1082 (2012). None of those elements exist. A shared use is not an exclusive use. *Thompson v. Schlittenhart*, 47 Wn.App. 209, 734 P.2d 48 (1987).

Second, every assertion of fact on pages 22-24 of Woodinville's Response lacks a citation to the record. They should be stricken.

I. The subsequent purchaser rule does not apply to these facts.

The City's reliance on the subsequent purchaser rule fails legally and factually. First, the City's two citations of authority, *Wolfe v. Dept. of Transportation*, 173 Wn. App. 302, 293 P.3d 1244 (Div. 2 2013) and *Hoover v. Pierce County*, 79 Wn. App. 427, 903 P.2d 464 (Div. 2 1995), are completely irrelevant.

Both cases involved claims for property damage resulting from the government's construction of improvements; the construction they complained about and some of the resulting property damage were caused before the claimants purchased the property. The courts concluded that the additional property damage that occurred after the date of purchase would not be compensable unless the claimants could show there was "additional governmental action causing a measurable decline in market value." Citing *Hoover*, 79 Wn. App at 436. These decisions provide no legal support for the City's claim here because there was no property

damage or any other damage to Fowler's property before he purchased it in 1991.

Moreover, there simply is no evidence there was any loss of value to the property resulting from the recording of the Covenant. As stated in the Appellant's Brief, the Covenant created at best an "inchoate interest", which is "[a]n interest in real estate which is not a present interest, but which may ripen into a vested estate, if not barred, extinguished, or divested." *Poltz v. Tyree*, 41 Wn.App. 695, 705 P.2d 1229 (Div. 1 1985) fn 3 *citing* Black's Law Dictionary 904 (4th rev. ed. 1968).

J. The court should treat this suit as a claim for eminent domain.

Woodinville argues that there is no basis for an award in Fowler's favor because some unstated "statutory procedures" have not been followed. But Woodinville chose the procedures it wanted, it argues form over substance, and overlooks its efforts to acquire control over the property that is 173rd.

While there is no evidence of an ordinance expressly authorizing the taking of Fowler's property under RCW 8.12.040, surely Woodinville authorized its attorney to commence this action, which seeks to take Fowler's property. And Woodinville has adopted laws to effectuate its desire to take the property. With Ordinance 483, Woodinville declared

173rd to be one of its city streets.[1] With Resolution Number 434 dated May 7, 2013 Woodinville adopted the Development Agreement with Woodin Creek Village Associates, LLC. CP 439-440. Under that agreement NE 173rd is to be improved and funding was allocated to enable those improvements. CP 443, 444.

RCW 8.12.050 provides:

> Whenever any such ordinance shall be passed by the legislative authority of any such city for the making of any improvement authorized by this chapter or any other improvement that such city is authorized to make, the making of which will require that property be taken or damaged for public use, such city shall file a petition in the superior court of the county in which such land is situated, in the name of the city, praying that just compensation, to be made for the property to be taken or damaged for the improvement or purpose specified in such ordinance, be ascertained by a jury or by the court in case a jury be waived.

Woodinville has done just that in this suit.

An ordinance is a "local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct, relating to the corporate affairs of the municipality." 5 McQuillin, Municipal Corporations, § 15.01 (3d Ed.). The term 'resolution' as applied to the act of an official body such as a city council or a board of county commissioners ordinarily denotes something less

---

[1] The court can take judicial notice of Ordinance 483. ER 201(f) "Judicial notice may be taken at any stage of the proceeding." A copy of Ordinance 483 is in the Appendix.

solemn or formal than the term 'ordinance.' *Baker v. Lake City Sewer District*, 30 Wn.2d 510, 518, 191 P. 2d 844 (1948). But if a resolution substantially complies with the requirements at issue, then it will be adequate. *Id.*

By Ordinance, Woodinville declared 173rd would become one of its city streets, and by Resolution Woodinville undertook to improve 173rd. By filing this lawsuit, Woodinville asked the court to order Fowler to execute a deed to the property for nothing.

No other "statutory procedure" appears to be relevant. The court should reject Woodinville's hollow plea and declare that the City of Woodinville may have the deed to the property upon payment to Fowler of the sum of $592,000 and his reasonable attorney fees and costs.

III. CONCLUSION

Article I, §16 of the Washington Constitution and the Fifth Amendment of the U.S. Constitution require the government to pay compensation when the government seeks to acquire private property. Woodinville is not exempt from these Constitutional requirements.

For all the foregoing reasons, the Court should reverse the trial court's grant of summary judgment, reverse the denial of Fowler's summary judgment, reverse the dismissal of Fowler's counterclaim, and direct the

trial court to enter summary judgment in Fowler's favor for the sum of $592,500 and his reasonable attorney fees and costs.

DATED this 8th day of January, 2015.

SCHEDLER BOND, PLLC

By Michael J. Bond
Michael J. Bond, WSBA No. 9154
Attorneys for Defendant/Appellant
The Fowler Partnership

ORDINANCE NO. 483

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, ADOPTING A NEW OFFICIAL STREET MAP AS REQUIRED IN SECTION 12.03.030 WMC; AND REPLACING SECTION 12.03.010 OFFICIAL STREET MAP ADOPTED, WMC WITH A NEW SECTION 12.03.010.

WHEREAS, the City of Woodinville, upon incorporation in 1993, adopted City of Woodinville Ordinance No. 33, establishing an "Official Street Map"; and,

WHEREAS, changes to the Official Street Map shall be made by ordinance as required in Section 12.03.010 WMC; and

WHEREAS, since 1993 the City Council of Woodinville has adopted Ordinances No. 147, 205, and 211, but the Official Street Map has not been updated or amended since June 1998; and

WHEREAS, there have been numerous new public streets and roads constructed through the subdivision process since 1998 that have been accepted by the City of Woodinville that are not shown on the Official Street Map; and

WHEREAS, there have been numerous right-of-way vacations approved by the City since 1998 that are not shown on the Official Street Map;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Replace Section 12.03.010 Woodinville Municipal Code with the following:

A. The Official Street Map dated January 5, 2010 is adopted as shown in Attachment A to this ordinance. The Mayor shall sign and the City Clerk attest to the Official Street Map within ten (10) business days after the effective date of the ordinance. The Official Street Map shall be posted within City Hall.

B. Changes to the Official Street Map shall be by ordinance, attested to by the Mayor and the City Clerk on the affected map. Dedications may be entered on the map without an ordinance after the City Council has accepted the dedication. In the event a prior map or plan is in conflict with the one adopted subsequent in time, the most recent shall prevail.

C. The following future streets shown on the Official Street Map when established or accepted by the City shall have the following right-of-way widths:

(a) 135th Avenue Northeast / 136th Avenue Northeast, 61 feet;

APPENDIX

(b) Northeast 173rd Street, 61 feet;

(c) Northeast 178 Street / Mill Place, 47 feet

The exact alignments of these future streets are not established by the adoption of this Official Street Map and will need to be established in the future either by City Council approval of an engineering study, or the City approval of a binding site plan, plat or short plat.

D. The City still desires to establish a street connecting Northeast 175th Street and the Woodinville-Snohomish Road in the general location of 135th or 136th Avenues Northeast, with a strong preference for completing the intersection of 135th Avenue Northeast and Northeast 175th Street. The City does not establish a specific alignment for 135th or 136th Avenues Northeast on the Official Street Map. However, prior to any building or other development permit being issued to an owner of property within the Special Study Area, as depicted on the Official Street Map, that the City shall consider the need for a street in the 135th Avenue or 136th Avenue corridor. The City may require building setbacks to accommodate such street and may require dedications and/or street improvements for such street. At such time as such a street is established, any reciprocal easement, inconsistent or in conflict with such street, may be extinguished or modified.

E. The alignment of the future grid road, 138th Avenue Northeast (Garden Way) between Northeast 171st Street and Northeast 175th Street, shall be as adopted by the King County Council in Ordinance No. 8144. The right-of-way width of 138th Avenue Northeast shall be 72 feet wide when established as a public street.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance, shall take effect (5) days after passage and publication of an approved summary consisting of the title to this ordinance.

ADOPTED BY THE CITY COUNCIL AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 15th DAY OF JUNE 2010.

Charles E. Price, Mayor

ATTEST/AUTHENTICATED:

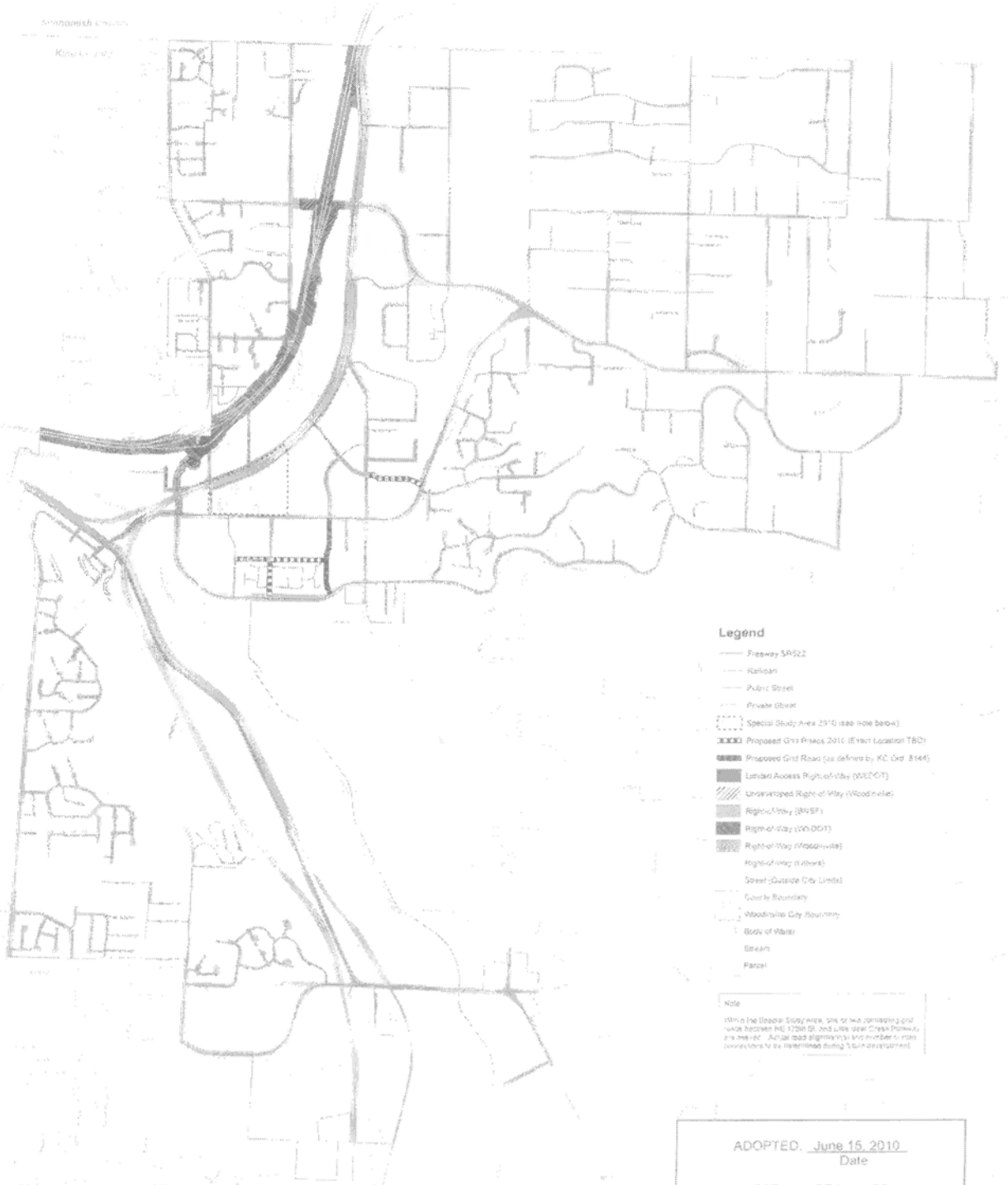
Jennifer L. Kuhn, CMC
City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

Greg A. Rubstello
City Attorney

PASSED BY THE CITY COUNCIL: 6-15-2010
PUBLISHED: 6-21-2010
EFFECTIVE DATE: 6-28-2010
ORDINANCE NO. 483

City of Woodinville



ADOPTED: June 15, 2010
Date

ORDINANCE No. 483

Mayor — Date

ATTEST: City Clerk — Date

Official Street Map 2010

0 800 1,600 3,200 Feet

1 inch = 800 feet

No. 72417-7

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

CITY OF WOODINVILLE,

Plaintiff/Respondent,

v.

THE FOWLER PARTNERSHIP,

Defendant/Appellant.

CERTIFICATE OF SERVICE OF
APPELLANT'S REPLY BRIEF

Michael J. Bond, WSBA # 9154
SCHEDLER BOND, PLLC
2448 76th Avenue SE, Suite 202
Mercer Island, WA. 98040
Telephone: 206-257-5440
Attorneys for The Fowler Partnership

I certify that I mailed a true and correct copy of the Appellant's Reply Brief and this Certificate of Service to be served on Greg Rubstello, attorney for Plaintiff/Respondent, at Ogden Murphy Wallace, PLLC 901 Fifth Avenue, Suite 3500, Seattle, WA 98164-2008, postage prepaid, on January 8, 2015.

DATED this 8th day of January, 2015.

SCHEDLER BOND, PLLC

Michael J. Bond

Michael J. Bond, WSBA No. 9154
Attorneys for Defendant/Appellant
The Fowler Partnership