

66245-7

66245-7

NO. 66245-7-I

King County Superior Court Cause No. 08-2-22750-2 SEA

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COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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GREGG SMITH AND KELLY SMITH  
Respondents/Plaintiffs

v.

LARRY L. PETERSON AND SUSAN PETERSON

Appellants/Defendants

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OPENING BRIEF OF APPELLANTS LARRY L. PETERSON AND  
SUSAN PETERSON

---

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2010 DEC 27 11:19:29

ORIGINAL

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## **APPENDICES**

- A PLS, Inc. Survey, July 28, 2010 (revised August 4, 2010)  
Incorporated into Findings and Judgment
- B Selected Items from Exhibits 6 and 61 – Annotated Views with  
Writing of Counsel for Appellant Superimposed
- C Findings of Fact, Conclusions of Law and Judgment Entered by the  
Trial Court from Which Appeal is Taken

## I. INTRODUCTION

Mr. and Mrs. Peterson appeal from a very limited portion of the overall decision of the trial court in this boundary line dispute between their residential property on the East Channel of Lake Washington and the neighboring property to the north owned by Mr. and Mrs. Smith. The appeal involves a boathouse roof/canopy and three pilings supporting it which slightly encroaches on the Smith side of the common boundary line as established by the court. The boathouse roof/canopy provides overhead protection for a boat moored to the dock declared by the court to be exclusively owned by Petersons, and it extends in a northerly direction toward the Smith property. It is at its outer end supported by three pilings driven into the shoreland. (See portion of PLS, Inc. survey, App. A.) This whole dock and roof/canopy structure has been existence for over 35 years. (See photos, App. B.)

In complete disregard for this well-established law on adverse possession, the trial court created an interest in Petersons to continue to “use” the encroachment on an exclusive basis, but entered a judgment that the “Smiths own the Smith pilings which are in their shorelands as shown by the survey adopted by the Court.” In an earlier finding and in the

judgment the court determines that the “Smith pilings” are not a “fixture.” The “reasoning” of the trial court is that the canopy which is supported by the pilings “. . . can be moved, removed or modified . . .” and, is therefore, not a fixture. The court further concludes that “It would be wasteful to remove it [the canopy] but it does not affect the ownership of the shorelands below or the Smith pilings.” Judgment, paras. 7 and 8. The decision is silent on the Peterson right to maintain, repair, or replace the portions of the roof/canopy and the three encroaching pilings.

The trial court denied the Peterson claim that the existence of these pilings and roof/canopy for well over 10 years as an encroachment resulted in either an exclusive fee or permanent easement ownership in their favor. The court instead created a “use” interest in Petersons without any definition. It is the position of Petersons that a “use” interest must either be an easement or a fee. The court did not determine the use right in Petersons to be permissive, and therefore, it must either be a fee or an easement created by adverse possession or prescriptive use.

The trial court simply made up the occupancy “use” interest of Peterson, but provided no definition as to its scope as to use of the encroaching shoreland and water and, most importantly, whether Mr. and

Mrs. Peterson and their successors have the right to maintain and/or replace the encroaching pilings and the canopy supported by them.

The court left the parties in limbo which is not the function of a trial court in sorting out boundary line disputes and adverse possession claims. Judges are elected to decide disputes – not duck them.

## **II. ASSIGNMENTS OF ERROR**

Appellants Peterson assign error as follows:

1. Error is Assigned to the first sentence of Finding of Fact 13 (all Findings are found at CP 242-50 and Appendix C attached) which reads:

The dock appears to have been a shared dock used jointly by the predecessors of these parties.

Issue raised by this Assignment of Error – This Assignment of Error conflicts hopelessly with Finding of Fact 10 in the second sentence which reads:

The court finds that the use of the dock and canopy and moorage slips demonstrated that the parties treated the dock as owned by the Petersons.

2. Error is assigned to Finding of Fact 13 with respect to the following language:

The canopy is attached to the pilings but is not a fixture. It is a metal cover on top of wood that can be moved, removed, or modified. It would be wasteful to remove it, but it does not affect the ownership of the shorelands below or the Smith pilings.

Issue Presented by this Assignment of Error – The law of fixtures has nothing to do with the law of adverse possession or prescriptive easement or boundary line. The law of adverse possession stands for the proposition that where one uses the real property of another as if the user owned it, and does so for the requisite 10-year duration, title transfers by operation of law through adverse possession or prescriptive easement. In the present case, the facts are undisputed as shown by the findings entered by the court, that the canopy and pilings that encroach unto the Smith property existed without permission for far in excess of 10 consecutive years. The canopy and pilings service a dock which is located entirely on the Peterson property as the court determined, and there is no evidence of permission to overcome a claim of adverse possession or prescriptive easement by Peterson.

3. Error is assigned to Finding of Fact 14 which reads:

The Petersons may continue to use the slip on the North side of the dock, although it may cross slightly the Smith South boundary in the water.

Issue raised by this Assignment of Error – The court simply punted on the question of the type of “use” awarded to Petersons. The law is clear that the use awarded to Petersons by virtue of the three pilings and the portion of the canopy encroaching on the Smith property must be either fee title by adverse possession or prescriptive easement by virtue of use. It cannot be simply a “use” that has no definition. That outcome leaves the parties in further uncertainty and subject to further litigation. The court failed in its responsibility to resolve the boundary issues and ownership issues between the parties in this finding 14.

4. Error is Assigned to Finding of Fact 15 which reads:

The Smiths own the Smith piling which are in their shorelands as shown on the survey adopted by the court.

Issue raised by this Assignment of Error – The court created a total mess in terms of ownership and future rights and obligations between the adjoining properties as far as the encroaching canopy and pilings are concerned. If the Smiths “own the Smith pilings” who is to maintain or replace them? Why would the Smiths maintain or replace pilings that are of absolutely no value to them? The pilings need replacement immediately as shown by the testimony and the photographs, and

therefore, this is not a semantic or theoretical issue but a practical issue of safety.

5. Error is Assigned to Conclusion of Law 6 which reads:

The Smiths own the Smith pilings. The Petersons own the dock and everything south of the boundary line shown on the survey. The northerly slip of the dock may be used by the Petersons even though they put a boat close to the boundary line near the easternmost Smith piling.

Issue raised by this Assignment of Error – This Conclusion of Law highlights the issue raised by the court failing to properly analyze the legal consequences of the many decade encroachment of the canopy and three pilings onto the Smith property. Under either easement or adverse possession principles, Petersons should have title to the pilings and the canopy and the shoreland under and around them to allow them to be able to use, occupy, and maintain and replace the entire canopy including the area of shoreland on the Smith side of the property line under and proximate to the canopy.

6. Error is Assigned to Conclusion of Law 7 which reads:

With respect to the Peterson counterclaim for adverse possession as far as the overhang of the canopy and the placement of the three pilings and shorelands under the water coextensive with the canopy overhang, the court finds that Petersons have not established a title by prescriptive

easement to the canopy overhang and to the shoreland under it.

Issue raised by this Assignment of Error – This issue is identical to the issues discussed above.

7. Error is Assigned to Paragraph 6 of the Judgment in its entirety.

Issue raised by this Assignment of Error is the failure of the trial court to properly describe the use/encroachment as adverse possession or a perpetual prescriptive easement.

8. Error is Assigned to Paragraph 7 of the Judgment as far as the second and third sentences are concerned (which have been quoted above out of the Findings of Fact).

Issue raised by this Assignment of Error – This Assignment of Error raises the same issues discussed above.

9. Error is Assigned to paragraph 8 of the Judgment appealed from here in its entirety.

Issue raised by this Assignment of Error – This paragraph has been discussed and quoted in respect to the identical language in the Findings of Fact. Specifically, what does “may continue to use” mean? How can

Smiths “own” supporting members of an encroaching structure owned by Petersons?

### III. STATEMENT OF THE CASE

The unchallenged Findings of Fact entered by the trial court sufficiently describe the background to this appeal. (CP 242-50; App. C.) Petersons have not ordered a verbatim transcript of proceedings. Petersons do not intend their appeal to extend beyond the legal issue of whether, based on the unchallenged Findings of Fact, the court properly resolved the disputes between the parties with respect to the encroachment of a portion of the canopy and the three pilings supporting that canopy serving the Peterson dock to the extent they encroach onto the Smith side of the boundary line.

The operative Findings of Fact are:

A. No. 9 which states that Smiths claim of ownership in the dock about which the canopy and three pilings are a part, based on adverse possession or boundary by acquiescence is not supported by fact, and is therefore, rejected. The court rejects any claim by Smiths of an interest in the dock, the canopy, the moorage area, and related improvements located

“for the most part in the vicinity of but south of the legal subdivision line. . . .”

B. Finding 10 further explains that the court concludes that the parties treated the dock and canopy and moorage slips “as owned by the Petersons.”

C. Finding 11 amplifies the fact that the court determined as a matter of fact that any use of the dock by the predecessors of Smith was “intermittent, non-exclusive in nature, neighborly in extent, and not demonstrating a physical dividing line or legal boundary on or in the vicinity of the dock itself.”

D. Finding 12 determines that the Smiths have failed to prove any ownership interest by acquiescence or adverse possession “or otherwise” in the dock, canopy, moorage slips, and related improvements located for the most part on the Peterson property.

E. Finding 13 determines that the dock appears to have been a shared dock used jointly by the predecessors to the parties, and for over 50 years a portion of the north canopy on the dock has been located on the north or Smiths side of the shorelands legal subdivision line. Photographs admitted into evidence and included in App. B to this brief demonstrate

that the canopy is integrally attached to the ground by the pilings and attached to and supported by the Peterson dock by its superstructure. The photographs show that the canopy and the pilings are not removable any more than any other building would be removable, that is, by destruction.

The survey (App. A), the photographs (App. B) and the findings of the court (App. C) amply demonstrate the occupancy of the canopy and pilings as an encroachment on the Smith property. This occupancy created in Petersons a type of use that only an owner would make of property. There is no evidence of permissive use and the court found none. The Petersons are, therefore, in title either as adverse possessors or as owners of a prescriptive easement in perpetuity.

After a three-day trial, the court established the upland common boundary between the Smith and Peterson properties as being a fence line created by an existing fence that has been in place and acquiesced in by the adjoining property owners for well over 10 years. (Judgment, CP 237-241.) No appeal is taken from this determination by Petersons. The court then extended the shoreland boundary line from the point where the existing fence intersects with the shoreline on a straight line paralleling the

platted shoreland boundary lines out into the East Channel. Petersons do not appeal the shoreland boundary decision of the trial court.

The photographs admitted into evidence, the PLS, Inc. survey adopted by the court in its judgment (CP 237-241) and also admitted into evidence, and the findings of the court all demonstrate that the northernmost portion of the canopy and the three pilings supporting that entire canopy on the north side of the Peterson dock encroach on the Smith property and have always done so.

The court found no permissive use by Petersons maintaining for over 35 years the encroaching improvements onto the Smith property, but the court then inexplicitly found that the Smiths “owned the pilings.” The court offers no explanation for this illogical and legally unsupportable determination of “ownership” of encroaching improvements by the record property owner, and yet the court conferred a right of “use” of those improvements on the encroaching property owner. This is not a possible outcome under the law.

The essential bottom line issue presented by the Findings of Fact, Conclusions of Law, and Judgment of the trial court is: How can the pilings which are an integral part of the canopy support be treated as

“owned by Smith,” and yet Petersons are conferred an apparently perpetual right to “use” the pilings. The pilings and the roof/canopy are wood structures which require maintenance and replacement in order to perform their protection and support function of covered boat moorage. The court essentially left the parties in limbo on this very important issue. That is the reason the Petersons appeal here.

#### IV. ARGUMENT

The case was decided by the Superior Court following trial. Findings, Conclusions and Judgment were entered by the trial court about eight months after the trial. (CP 237-241, 242-250; App. C.) A “final judgment” as the judgment entered by the trial court in this case purports to be, is defined by our courts as:

. . . a judgment that ends the litigation, leaving nothing for the court to do but execute the judgment. *Anderson & Middleton Lumber Company v. Quinault Indian Nation*, 79 Wn. App. 221, 225, 901 P.2d 1060 (1995), *affirmed*, 130 Wn.2d 862, 929 P.2d 379 (1996).

The judgment entered here with respect to the canopy and the three pilings supporting it that encroach on the Smith property cannot be considered “final” because it is not self-explanatory as to what the nature of the legal relationship is between the adjoining property owners with

respect to the use, occupancy, maintenance, repair and replacement and all other ownership rights in the boathouse roof/canopy and the pilings that constitute the encroachment, together with the use and occupancy rights of the shoreland and waters under and around the canopy and pilings.

Judgment entered here is not “final” because it leaves these parties open to significant further dispute on the very issue submitted to the court for determination. What exactly is the legal classification of the “use” right granted Petersons and the “ownership” of Smiths in the pilings? The court simply failed in its obligation to end the dispute between the parties as to the common boundary line and the encroachments.

The survey (App. A) and the photographic exhibits (Exs. 6 and 61; App. B) and the Findings of Fact of the trial court amply demonstrate the existence of adverse possession on the part of Petersons with respect to the portion of the canopy and the three pilings supporting it that extend on to the Smith property. Adverse possession elements are identified in *Chaplin v. Sanders*, 100 Wn.2d 853, 857, 676 P.2d 431 (1984) and *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 774 P.2d 6 (1989). *Chaplin* and subsequent appellate decisions have eliminated the subjective intent element of adverse possession and substituted a requirement “. . . only that the

claimant treat the land as his own against the world throughout the statutory period.”

There could be no plainer instance of adverse possession than constructing improvements on the land of another. This includes land around the improvement “reasonably necessary to gain access to it.” *Skoog v. Seymour*, 29 Wn.2d 355, 187 P.2d 304 (1947); *Northern Pacific Railway v. Concannon*, 75 Wash. 591, 135 Pac. 652 (1913). The cases on the subject are collected in Stoebuck & Weaver, 17 Wash. Practice, Real Estate: Property Law, *see, e.g.*, Section 8.10. The canopy and pilings supporting it are plainly structures extending into the Smith property and have done so for many decades. The three pilings supporting the canopy at its outer/northerly end are also an obvious part of the structure, driven into the shoreland, and absolutely necessary for the support of the canopy itself. These pilings are visible and serve the essential purpose of support of the boathouse canopy which is also integrated into and supported by the Peterson dock.

Adverse possession for the required statute of limitations period of time, gives the adverse possessor title to a present possessory estate in the land possessed. It is a new and original title, not acquired through the

displaced owner, but the previous title is extinguished by the perfected adverse possession. No transfer of title is necessary, it occurs when the conditions for adverse possession are met. Whatever title the displaced owner had the adverse possessor succeeds to. In this case, that would be a fee simple absolute title. The principles stated here are found in Stoebuck & Weaver, Op. Cit. supra, Section 8.6. Given the length of time that the canopy and pilings have existed in the present location shown on the photographs and by the survey attached to the judgment on appeal here, there can be no sensible argument that adverse possession title in Petersons has not arisen many years ago. Nevertheless, the court muddled the entire picture with respect to the canopy and pilings by refusing to declare that the title formerly in Smith's predecessors is now in Peterson as far as the encroachment on the Smith property by the canopy and pilings is concerned. The court substituted some sort of vague "use" interest in Petersons for what the law specifically requires.<sup>1</sup>

An alternative to Peterson acquisition of fee title by adverse possession, would be Peterson acquisition of a prescriptive easement. According to Stoebuck & Weaver, Op. Cit. supra, Section 2.7, the words

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<sup>1</sup> And yet incongruously gave Smiths "ownership" of the pilings – go figure!

“prescription” and the phrase “adverse use” are “completely interchangeable.” Washington’s 10-year statute of limitations is equally applicable to prescriptive easements as it is to adverse possessory uses. The cited treatise states that the main difference is that a prescriptive easement involves the use of another’s land and gives easement rights, “. . . whereas adverse possession involves the possession of another’s land and gives title.”

Actual physical use is required of another’s land and to create a prescriptive easement it must “. . . be the kind of use one would make of an easement, whether for walking, driving, utility lines, or otherwise.” The writers state that the nature of the use “. . . defines the nature, or scope, of the easement that may be obtained by prescription and its location.” Usage should be without the owner’s permission and generally speaking the same elements and same standards applicable to adverse possession title acquisition apply to prescriptive easements.

The authors of the treatise state (as page 104) that there is no current basis in law to argue that subjective intent is an aspect of hostility in the Washington law of prescription. The “exclusivity” requirement of adverse possession “. . . takes on different application than the law of

prescription. . . .” In the case of a prescriptive easement, the use or possession must be the sort that would be normal for a true easement holder or owner to make under the circumstances, i.e., “exclusive” need not mean to the exclusion of everybody else, it only requires the type of exclusion that an easement holder would typically enjoy.

Case law in Washington and the authors of the treatise support the proposition that an oral grant of an easement is not sufficient “permission” to forestall creation of an interest by prescriptive easement. The authors of the treatise (at Section 2.7) state that the “. . . reasoning to support this . . . is that the attempt to create an easement orally is a nullity, having no legal effect to create either an easement or a license.” Citing *Lechman v. Mills*, 46 Wash. 624, 91 Pac. 11 (1907) and *Washburn v. Esser*, 9 Wn. App. 169, 511 P.2d 1387 (1973). See also, *Lee v. Lozier*, 88 Wn. App. 176, 945 P.2d 214 (Div. I, 1997).

Instead of creating in its judgment either a fee simple title in Peterson by reason of adverse possession of the canopy and piling encroachment, or a permanent prescriptive easement to use, occupy, maintain and replace that encroachment on a small portion of the Smith property, the court in Judgment paragraph 8 held that:

8. The Petersons may continue to use the slip on the north side of the dock, although the slip may cross slightly the Smith south boundary in the water. The Smiths own the Smith pilings which are in their shorelands as shown by the survey adopted by the Court.

What title company would understand how to insure Peterson title as a result of this judgment paragraph which allows them to “continue to use the slip on the north side of the dock” but confirms that “Smiths own the Smith pilings” which are “in their [Smiths] shorelands.” Stated very simply, the trial court left the question of title by reason of the existing encroachment of the canopy and three pilings in an unresolved mess. The Court of Appeals needs to straighten this out at the appeal level or order the trial court to revisit the question. Otherwise these parties who are already warring over boundary lines, will simply continue to do so.

## V. CONCLUSION

The appellate court is asked for either of the following relief:

1. Directly dispose of the encroachment title question by modifying the judgment of the trial court to specifically provide in paragraph 8 that Petersons, their heirs, successors, and assigns have acquired fee simple title by adverse possession to the encroachment on the Smith property by the canopy and three pilings together with the

shorelands below, and together with a reasonable distance surrounding the canopy and pilings for purposes of access and maintenance and repair and replacement; or

2. Same as #1 above with respect to the amount of a perpetual prescriptive easement in Petersons; or

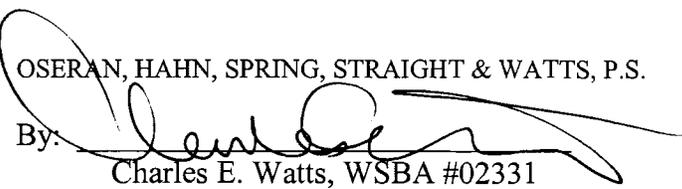
3. Remand the matter to the trial court for entry of amended judgment reflecting fee simple title in Petersons, their heirs, successors, and assigns to the area of encroachment by the canopy and three pilings and a reasonable width surrounding those areas for maintenance and repair and replacement access; or

4. Order or remand for entry of an order establishing prescriptive easement in favor of Petersons, their heirs, successors, and assigns for purposes of allowing them to use and maintain the canopy and the pilings, including replacement, maintenance and repair thereof, together with a reasonable distance surrounding them.

RESPECTFULLY SUBMITTED this 21<sup>ST</sup> day of December, 2010.

OSERAN, HAHN, SPRING, STRAIGHT & WATTS, P.S.

By:

  
Charles E. Watts, WSBA #02331

Attorney for Appellants/Defendants

CERTIFICATE OF SERVICE

The undersigned, Joy Griffin, certifies that on the 23<sup>rd</sup> day of December, 2010, she caused to be served a copy of the attached Opening Brief of Appellants Peterson to the following via US Mail:

Brian Krikorian  
Law Offices of Brian Krikorian  
2110 N. Pacific St., Suite 100  
Seattle, WA 98103

The Court of Appeals/State of Washington, Division I  
One Union Square  
600 University Street  
Seattle, WA 98101-4170

I certify under penalty of perjury under the laws of the State of Washington the foregoing is true and correct.

Dated this 23<sup>rd</sup> day of December in Bellevue, Washington.

  
Joy Griffin

# **APPENDIX A**

**(Surveyor's Plan View of Area of Encroachment Based on  
Survey of PLS, Inc. Referenced in Findings and Judgment as  
Revised August 4, 2010 – as Annotated by Peterson Counsel)**



# F SURVEY

TWP. 24 N., RGE. 5 E., W.M.  
WASHINGTON

BOOK \_\_\_\_\_ PG. \_\_\_\_\_  
REC. NO. \_\_\_\_\_  
LOTS 21-26, BLOCK A, C.D. HILLMAN'S  
LK WA. GARDEN OF EDEN ADD. #3

## NEW LEGAL DESCRIPTION TAX PARCEL NO. 3343302060

EI  
PARCEL

2 AND THE NORTH 4.25  
WASHINGTON GARDEN OF  
11 OF PLATS, PAGE 81,  
E CITY OF BELLEVUE,

LOTS 24, 25 AND 26 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR; TOGETHER WITH SECOND CLASS SHORELANDS AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON; SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

TOGETHER WITH THAT PORTION OF LOT 23 LYING SOUTH OF THE FOLLOWING DESCRIBED LINE, COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23; THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23;

EXCEPT THAT PORTION OF LOT 24 LYING NORTH OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23; THENCE NORTH 00°53'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET; THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23 AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 84°14'40" WEST A DISTANCE OF 51.22 FEET; THENCE NORTH 54°12'46" WEST A DISTANCE OF 7.48 FEET TO THE WESTERLY EDGE OF A CONCRETE-BULKHEAD; THENCE NORTH 08°33'00" WEST TO THE LIMITS OF SAID SECOND CLASS SHORELANDS.

## SURVEYORS NARRATIVE:

THE PURPOSE OF THIS RECORD OF SURVEY IS TO SHOW THE COURT ORDERED PROPERTY LINE COMMON TO THE SUBJECT PARCELS. FOR INFORMATION PERTAINING TO THE ORIGINAL DETERMINATION OF THE PARCEL BOUNDARIES BY THE SURVEYOR, PRIOR TO SAID COURT ORDER, SEE RECORD OF SURVEY PAGES 53 AND 56, AND RECORDED UNDER KING COUNTY RECORDING NUMBER 2008072390001

## ORIGINAL LEGAL DESCRIPTIONS:

SEE KING COUNTY RECORD OF SURVEY RECORDED UNDER RECORDING NO. 2008072390001.



## NEW LEGAL DESCRIPTION TAX PARCEL NO. 3343302030

LOT 21, EXCEPT THE NORTH 4.25 FEET THEREOF AND LOTS 22 AND 23 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR; TOGETHER WITH SECOND CLASS SHORELANDS, AS CONVEYED BY THE STATE OF WASHINGTON. SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON, AS TO LOTS 22 AND 23; SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

TOGETHER WITH THAT PORTION OF LOT 24 LYING NORTH OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23; THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET; THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23 AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 84°14'40" WEST A DISTANCE OF 51.22 FEET; THENCE NORTH 54°12'46" WEST A DISTANCE OF 7.48 FEET TO THE WESTERLY EDGE OF A CONCRETE-BULKHEAD; THENCE NORTH 08°33'00" WEST TO THE LIMITS OF SAID SECOND CLASS SHORELANDS.

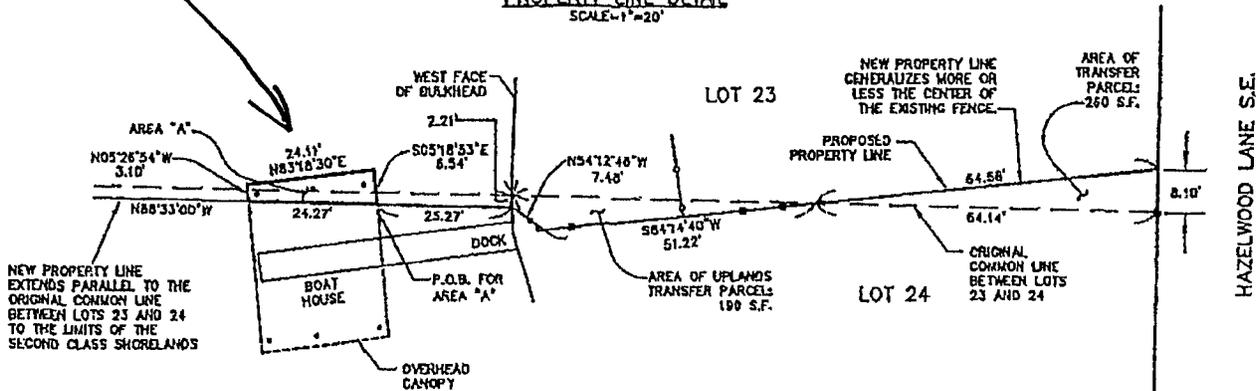
EXCEPT THAT PORTION OF LOT 23 LYING SOUTH OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23; THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23;

## LEGEND

- WOOD FENCE
- CHAINLINK FENCE
- TAX PARCEL NUMBER
- SET TACK IN LEAD WITH WASHER STAMPED "BVP 17676" ON CONCRETE BULKHEAD
- SET REBAR AND CAP STAMPED "PLS 17676"
- P.O.B. POINT OF BEGINNING.

AREA  
IN  
DISPUTE

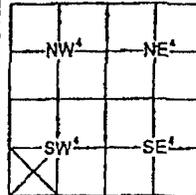
## PROPERTY LINE DETAIL SCALE=1"=20'



REVISED AUG. 4, 2010



BOUNDARY SURVEY  
FOR  
LARRY PETERSON  
6220 HAZELWOOD LANE SE  
BELLEVUE, WA 98006



INDEXING  
INFORMATION  
SW 1/4 SW 1/4  
SECTION: 20  
TOWNSHIP: 24N  
RANGE: 5E  
COUNTY: KING

**PLS, Inc.** 353 Hwy Clifton Boulevard, #281  
Issaquah, Washington 98027  
Professional Land Surveyors (425) 313-9378 (fax) 313-9379

DRAWN BY: KAP	DATE: JULY 26, 2010	JOB NO.:
CHECKED BY: BVP	SCALE: 1" = 40'	SHEET: 1 OF 1

10/13/10 CAS

# **APPENDIX B**

**(Selected Items from Exhibits 6 and 61 – Annotated Views with  
Writing of Counsel for Appellant Superimposed)**

VIEW TO NORTHWEST  
TOWARD MERCEB ISLAND

MERCEB ISLAND

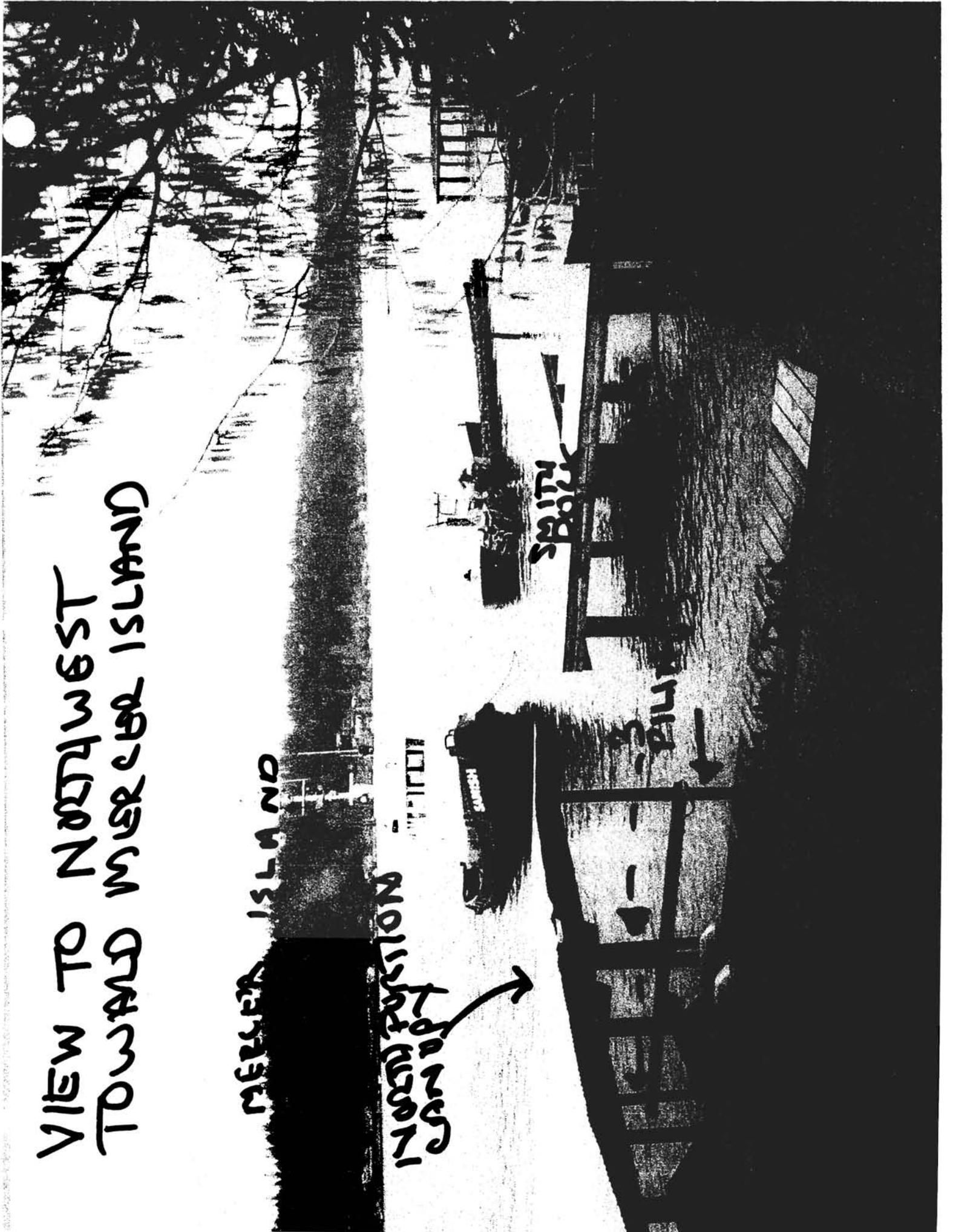
MOISTURE  
TANK

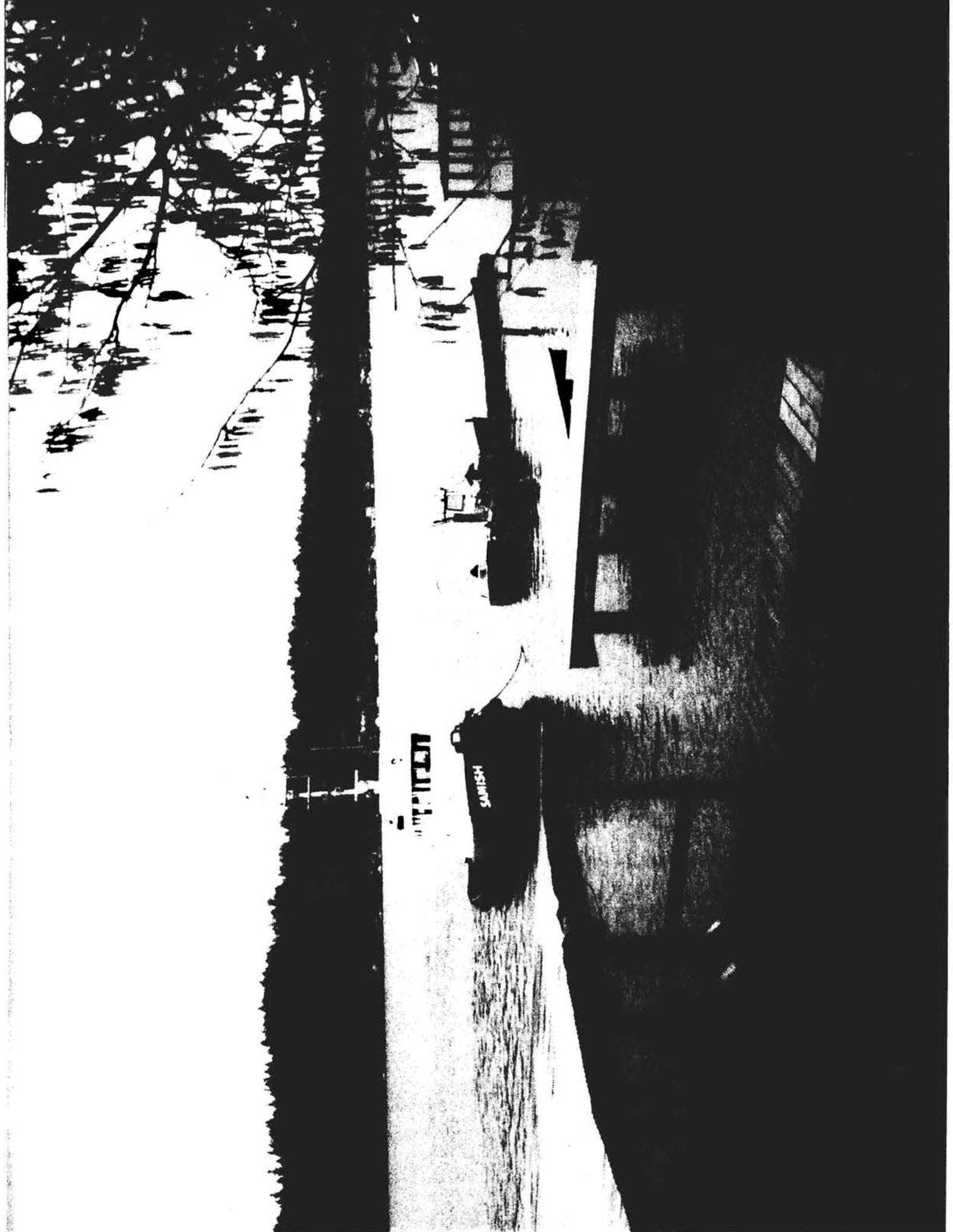
WATER

SEARCH

SPITZ

PILL





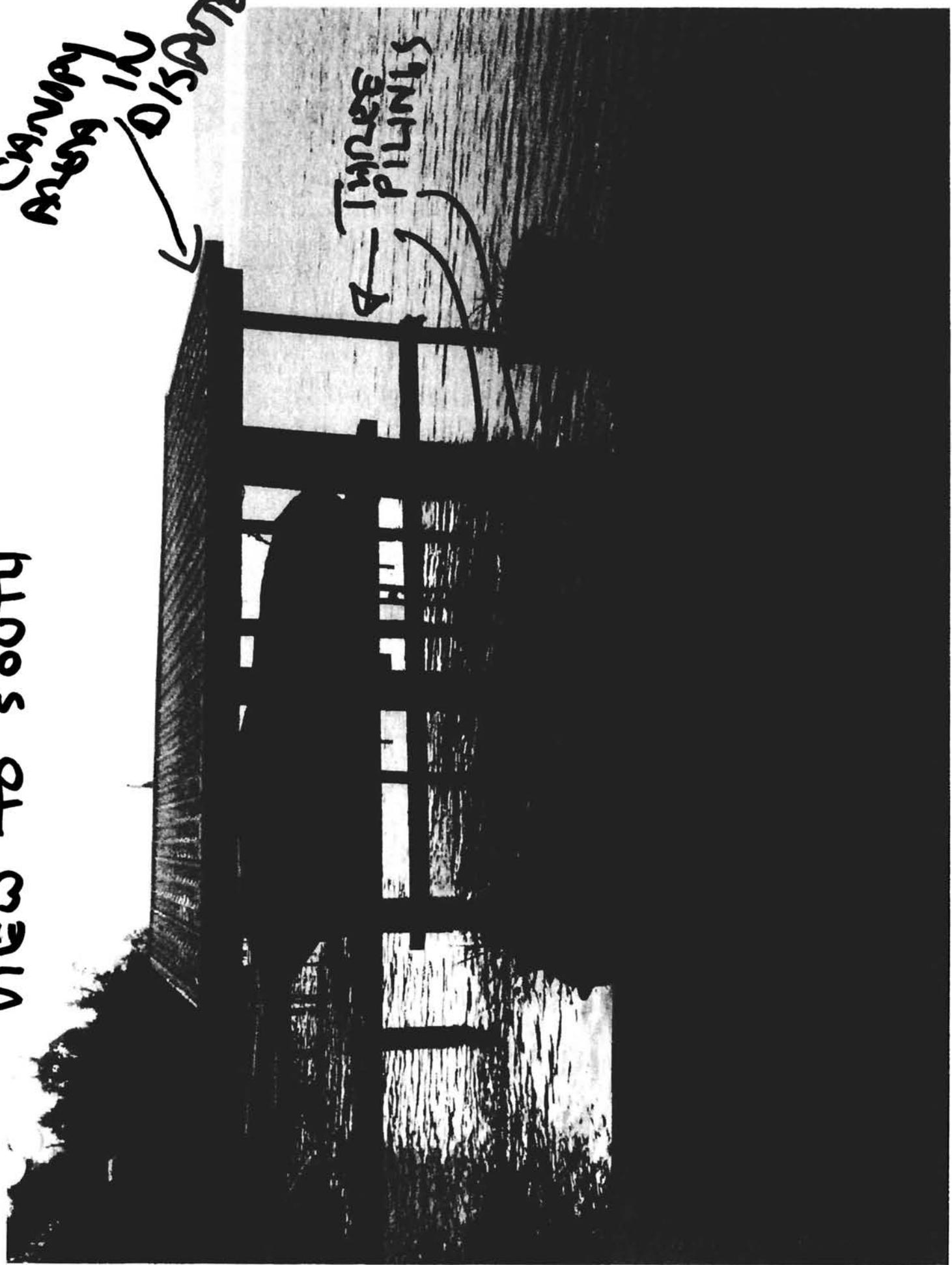




VIEW TO SOUTH

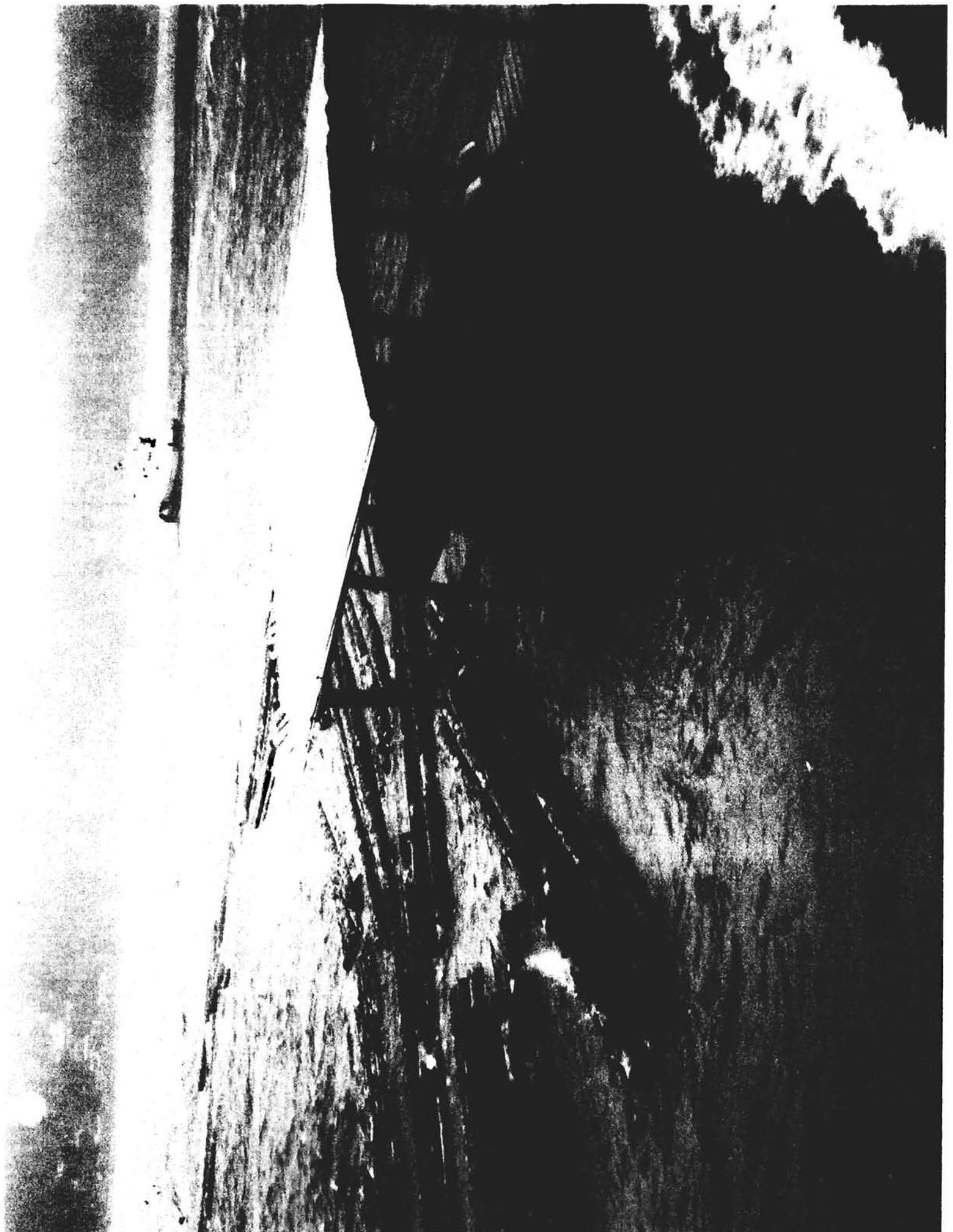
CANOPY AREA IN DISASTE

THREE PILING









# **APPENDIX C**

**(Findings of Fact, Conclusions of Law and Judgment Entered  
by the Trial Court from Which Appeal is Taken)**

**FILED**

KING COUNTY, WASHINGTON

OCT 14 2010

SUPERIOR COURT CLERK  
JENNIFER L. SCHNARR  
DEPUTY

Judge Carol Schapira

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

GREGG SMITH and KELLY SMITH, husband and wife,

Plaintiff,

v.

LARRY L. PETERSON and SUSAN PETERSON,  
husband and wife and the marital community  
composed thereof,

Defendants.

No. 08-2-22750-2 SEA

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

THIS MATTER coming on for trial before the undersigned judge of the King County Superior Court on the 25<sup>th</sup> day of January, 2010; plaintiffs Smith appearing in person and through the Law Offices of Catherine C. Clark, Seattle, WA; defendants Peterson appearing in person and through their counsel, Charles E. Watts, of Oseran Hahn Spring, Straight & Watts, P.S., Bellevue WA; the court having heard and considered the evidence and exhibits admitted at trial and having read the briefs and memoranda and heard the argument of counsel; the court having previously delivered its Memorandum Decision at the close of the evidence on January 28, 2010; now, therefore, the court does make and enter its Findings of Fact and Conclusions Of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW -1  
C:\Users\schapic\AppData\Local\Microsoft\Windows\Temporary  
Internet Files\Content.Outlook\OFX3CRZ9\of F Concl of Law  
(easement) (3).doc 10/13/10 (s) #26530.001

~~OSERAN HAHN SPRING STRAIGHT & WATTS P.S.  
18900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201~~

**ORIGINAL**

1 Additionally, the Court incorporates its oral rulings made on January 28, 2010, February 26,  
2 2010, May 27, 2010, and August 13, 2010.

### 3 FINDINGS OF FACT

4 1. Plaintiffs and defendants are residents of King County, Washington at all times  
5 material hereto.

6 2. Plaintiffs Smith purchased residential real property with older residence on it in  
7 December 2007. This property is immediately adjacent to and north of the defendants Peterson  
8 property described in the next paragraph.

9 3. The property purchased by Smith in 2007 has a street address of 6208 Hazelwood  
10 Lane SE, Bellevue, WA 98006, King County tax parcel no. 334330-2030, and is legally  
11 described as set forth below:

12 Lot 21, except the north 4.25 ft. thereof, and Lots 22 and 23 in  
13 Block "A" of Hillman's Lake Washington Garden of Eden No. 3,  
14 as per Plat recorded in Volume 11 of Plats, Page 81, Records of  
15 King County Auditor; TOGETHER WITH second class shorelands  
as conveyed by the State of Washington, situate in front of,  
adjacent to, or abutting thereon, as to Lots 22 and 23, situate in the  
City of Bellevue, County of King, State of Washington.

16 4. Defendants Peterson purchased property in the City of Bellevue which is located  
17 immediately adjacent to and south of the parcel described in the preceding paragraph. Petersons  
18 purchased in 1971 and have resided on their property ever since. The Peterson property has a  
19 street address of 6220 Hazelwood Lane SE, Bellevue WA 98006, a King County tax parcel no.  
20 of 334330-2060-07 and is legally described as:

21 Lots 24, 25 and 26, Block "A", C.D. Hillman's Lake Washington  
22 Garden of Eden addition to Seattle, Division No. 5, according to  
the plat thereof recoded in Volume 11 of Plats, Page 81, Records

1 of King County, Washington; TOGETHER WITH second class  
2 shorelands adjoining.

3 5. In 1971 shortly after they closed on the purchase of their property described in the  
4 preceding paragraph, Petersons erected a fence extending from Hazelwood Lane on the east to  
5 the vicinity of, but not to the shoreline on the west in the area of, but not on, the common  
6 subdivision boundary line between the property they purchased and what is now the Smith  
7 property but which was at the time property owned by the Heath family. Over the years, this  
8 fence has required repair or replacement and all of this work has been done by and at the expense  
9 of Petersons. The fence has essentially remained in the same location since originally installed  
10 in 1971. The fence intersects the common upland subdivision line at about its midpoint. A fence  
11 existed between the parties before the Petersons' fence.

12 6. In the early 1980s, Petersons completed the fence from a point about 8 feet east of  
13 the shoreline, where it had ended until that time, and extended the fence in a diagonal straight  
14 line in a northwesterly direction ("veer") to a point of intersection with the shoreline that is about  
15 7 feet north of where the existing fence erected in 1971 would have intersected with the shoreline  
16 had it been extended in a straight line in a westerly direction. The point of intersection of the  
17 "veer" with the west face of the shoreline bulkhead is approximately 23.5" south of the point of  
18 intersection of the legal subdivision line with the west face of the bulkhead. This "veer" has  
19 remained in place since the early 1980s.

20 7. The Petersons and the Heath family (the Smith predecessors), respected the fence  
21 line as the common boundary between the two parcels. Over the years since 1971, Petersons  
22 exclusively have maintained, repaired, and replaced the fence, including the "veer," as needed.  
Each maintained and used up to the fence line on their side (Petersons on the south and Heaths

1 on the north) and after the “veer” was installed, the Peterson and Heath families respected the  
2 extension of the fence line in the northwesterly direction as if it were the legal boundary between  
3 the two parcels. The Peterson and Heath families treated the fence line as if it were the boundary  
4 line by use, maintenance, and the evidence establishes by clear, cogent and convincing standards  
5 that the fence as constructed and including the “veer,” was at all times treated as the common  
6 legal boundary line between the respective ownerships.

7 8. The fence line does not coincide with the legal boundary line between the  
8 properties as shown by the PLS, Inc. survey admitted into evidence in this action. The PLS  
9 survey is recorded with the Auditor of King County, Washington under Auditor’s file no.  
10 20080723900001, on the 23<sup>rd</sup> day of July, 2008. The court finds that the PLS, Inc. survey  
11 identified above is accurate and accurately shows the legal boundary line between the Peterson  
12 and Smith parcels based on the subdivision in which they both are located, and the PLS survey  
13 also shows to a reasonable degree of accuracy the fence including the “veer” which the court  
14 adopts as the legal boundary line between the upland properties rather than the subdivision line.  
15 The court adopts and incorporates by reference as fact found in this action the PLS, Inc. survey,  
16 Job No.8049, dated July 26, 2010, revised August 4, 2010, showing the modified common  
17 boundary between the properties of plaintiffs and defendants on the upland and shoreland and  
18 determined same to be an accurate statement of the decision of the court as to the modified  
19 common boundaries of upland and shoreland between the properties and as to the footprint of the  
20 canopy. True copy of the latter-mentioned survey is attached hereto and to the Judgment.

21 9. Plaintiffs Smith claim ownership of an interest in the “north-half” of the dock,  
22 canopy, and mooring area in connection with the structure extending into the East Channel of

1 Lake Washington in the vicinity of but for the most part south of the legal subdivision line  
2 between the Smith and Peterson parcels. Smith claims this right based on principles of  
3 "boundary by acquiescence." The court finds that the Smiths have not established a "boundary  
4 by acquiescence" by clear, cogent, and convincing evidence sufficient to give rise to any  
5 ownership interest in themselves or their predecessors in interest in the dock, canopy, moorage  
6 area and related improvements located for the most part in the vicinity of but south of the legal  
7 subdivision line as shown on the PLS survey.

8 10. There is no definite line or demarcation of ownership interests sufficient to give  
9 rise to a boundary by acquiescence in the dock. The Court finds that the use of the dock and  
10 canopy and moorage slips demonstrated that the parties treated the dock as owned by the  
11 Petersons.

12 11. In fact, to the extent the Heath family used the dock in dispute, it was a shared  
13 use, intermittent, non-exclusive in nature, neighborly in extent, and not demonstrating a physical  
14 dividing line or legal boundary on or in the vicinity of the dock itself.

15 12. Smiths have failed to prove by the required evidentiary standard the existence of  
16 an ownership interest by acquiescence, adverse possession, or otherwise in the dock, canopy, ,  
17 moorage slip, and related improvements located for the most part on the Peterson property in the  
18 vicinity of but southerly of the subdivision boundary line between the two properties as shown  
19 on the PLS survey identified above.

20 13. The dock appears to have been a shared dock used jointly by the predecessors of  
21 these parties. For over 50 years, a portion of the north canopy on the dock in the vicinity of but  
22 mostly southerly of the common subdivision line between the Peterson and Smith parcels,

1 together with three supporting pilings, has been located on the north or Smith side of the  
2 shorelands of the legal subdivision line as shown on the PLS survey. ("Smith pilings") The  
3 canopy is attached to the pilings but is not a fixture. It is a metal cover on top of wood that can  
4 be moved, removed or modified. It would be wasteful to remove it, but it does not affect the  
5 ownership of the shorelands below or the Smith pilings.

6 14. The Peterson's may continue to use the slip on the North side of the dock,  
7 although it may cross slightly the Smith south boundary in the water.

8 15. The Smiths own the Smith pilings which are in their shorelands as shown on the  
9 survey adopted by the Court .

10 WHEREFORE, based upon the foregoing Findings of Fact, the court does make and  
11 enter its

#### 12 CONCLUSIONS OF LAW

13 1. The court has jurisdiction of the parties and subject matter of this proceeding.

14 2. Plaintiffs Smith have failed to establish any claim of ownership in or to any  
15 portion of the Peterson property lying southerly of the line established by PLS, Inc. in its survey,  
16 Job No.8049, dated July 26, 2010, Revised August 4, 2010,establishing the line of the existing  
17 fence line (including the "veer"), and as established by PLS, Inc. survey referenced above with  
18 respect to the common shoreland boundary commencing at the point of intersection of the upland  
19 boundary and the west face of the bulkhead and extending westerly in a straight line therefrom  
20 parallel to adjoining legal subdivision boundary lines.

21 3. The court adopts the PLS, Inc. survey recorded with the Auditor of King County,  
22 Washington under Auditor's receiving no. 20080723900001, on the 23<sup>rd</sup> day of July, 2008 and

1 admitted to evidence in this action as the correct demonstration of the surveyed location of the  
2 legal subdivision line, common to the Peterson and Smith property described in Finding 3 and 4  
3 above. The referenced survey also reasonably accurately describes the location of the fence  
4 described in these Findings and Conclusion, including the northwesterly "veer" as the fence  
5 approaches the shoreline of the East Channel.

6 4. The existing fence and its predecessors located in the vicinity of (and intersecting  
7 with) the common subdivision line between the Smith and Peterson parcels, has become and  
8 should be determined to be the common boundary between the Peterson and Smith parcels as to  
9 the uplands (east of the shoreline) only. This fence line includes the location of the existing  
10 fence and the northwesterly "veer" as the existing fence approaches the shoreline insofar as the  
11 fence extends to the point of intersection with the shoreline which the court determines to be the  
12 westerly face of the existing concrete bulkhead. The new common boundary on the upland  
13 should be as close as possible to the center line of the support posts for the fence, and the line  
14 should be as straight as can be possible to eliminate any minor angulations. In order to avoid  
15 conflict between the parties or their successors or assigns, the line as established by the fence  
16 shall be straightened to avoid any minor curvatures or angulations in the legal description.  
17 Petersons and their successors and assigns will have the exclusive right to maintain the existing  
18 fence (but not the obligation to do so) upon which the court bases its determination of boundary  
19 by acquiescence. At such time as the existing fence is to be totally replaced with a new structure  
20 (whether or not using existing post foundations), the parties may mutually agree on replacing the  
21 fence in the present location or either party or either successors may build a new fence entirely  
22 upon their property as determined by this decision, not on the center line itself.

1           5.       With respect to the common boundary between the Smith and Peterson parcels in  
2 the shorelands extending from the western face of the existing bulkhead, the court determines  
3 that the shorelands begin with the west face of the existing bulkhead at the point of intersection  
4 of that face with the new upland common boundary line as described in the preceding paragraph  
5 of these Conclusions, and then extends westerly on a line parallel to the adjoining legal  
6 subdivision lines extending into the shorelands.

7           6.       The Smiths own the Smith pilings. The Peterson's own the dock and everything  
8 South of the boundary line shown on the survey. The northerly slip of the dock may be used by  
9 the Petersons even though it may put a boat close to the boundary line near the easternmost  
10 Smith piling.

11          7.       With respect to the Peterson counterclaim for adverse possession as far as the  
12 overhang of the canopy and the placement of the three pilings and the shorelands under the water  
13 coextensive with the canopy overhang, the court finds that Petersons have not established a title  
14 by prescriptive easement to the canopy overhang and to the shoreland under it.

15          8.       The court adopts and confirms the PLS, Inc. survey, Job No. 8049, dated July 26,  
16 2010, Revised Aug 4, 2010, as the basis for its determination of the upland and shoreland  
17 common boundaries between the properties of plaintiffs and defendants herein, and their heirs,  
18 successors, and assigns. Petersons are directed to forthwith cause the recording of this survey  
19 with the Auditor of King County and to file a notice of that recording number in this action with  
20 notice to the other party.

21           DONE and DATED this \_\_13th\_\_ day of October, 2010

22   
\_\_\_\_\_  
THE HONORABLE CAROL SCHAPIRA

**LEGAL DESCRIPTION AREA "A"**

COMMENCING AT THE SOUTHEAST CORNER OF LOT 23 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET;  
 THENCE SOUTH 84°13'50" WEST A DISTANCE OF 64.48 FEET TO THE SOUTH LINE OF SAID LOT 23;  
 THENCE CONTINUING SOUTH 84°13'50" WEST A DISTANCE OF 51.22 FEET TO THE WESTERN EDGE OF A CONCRETE BULKHEAD;  
 THENCE NORTH 88°33'00" WEST, PARALLEL TO THE COMMON LINE OF SAID LOT 24 AND LOT 23, A DISTANCE OF 25.27 FEET TO THE EAST LINE OF A BOATHOUSE ROOF OVERHANG AS IF NOW EXISTS AND THE POINT OF BEGINNING;  
 THENCE CONTINUING NORTH 88°33'00" WEST A DISTANCE OF 24.27 FEET TO THE WEST LINE OF SAID BOATHOUSE ROOF OVERHANG;  
 THENCE NORTH 00°26'54" WEST A DISTANCE OF 3.10 FEET TO THE NORTH LINE OF SAID BOATHOUSE ROOF OVERHANG;  
 THENCE NORTH 53°18'30" EAST A DISTANCE OF 24.11 FEET TO THE EAST LINE OF SAID BOATHOUSE ROOF OVERHANG;  
 THENCE SOUTH 05°18'53" EAST A DISTANCE OF 6.54 FEET TO THE POINT OF BEGINNING.

**RECORD OF SURVEY**  
 SE 1/4, SW 1/4, SEC. 20, TWP. 24 N., RGE. 5 E., W.M.  
 KING COUNTY, WASHINGTON

BOOK \_\_\_\_\_ PG. \_\_\_\_\_  
 REC. NO. \_\_\_\_\_  
 LOTS 21-26, BLOCK A, C.D. HILLMAN'S  
 LK WA. GARDEN OF EDEN ADD. #3

**LEGAL DESCRIPTION SE 62ND STREET**  
 (DERIVED FROM THE LEGAL DESCRIPTIONS FOR TAX PARCEL NUMBERS 3343302030 AND 3343302010)

THE SOUTH 20.75 FEET OF LOT 18, ALL OF LOT 22 AND THE NORTH 4.23 FEET OF LOT 21 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

**NEW LEGAL DESCRIPTION TAX PARCEL NO. 3343302060**

LOTS 24, 25 AND 26 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, TOGETHER WITH SECOND CLASS SHORELANDS AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON; SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

TOGETHER WITH THAT PORTION OF LOT 23 LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:  
 COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET TO THE POINT OF BEGINNING;  
 THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23;  
 EXCEPT THAT PORTION OF LOT 24 LYING NORTH OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET;  
 THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23 AND THE POINT OF BEGINNING;  
 THENCE CONTINUING SOUTH 84°14'40" WEST A DISTANCE OF 51.22 FEET TO THE WESTERN EDGE OF A CONCRETE BULKHEAD;  
 THENCE NORTH 88°33'00" WEST TO THE LIMITS OF SAID SECOND CLASS SHORELANDS.

**NEW LEGAL DESCRIPTION TAX PARCEL NO. 3343302030**

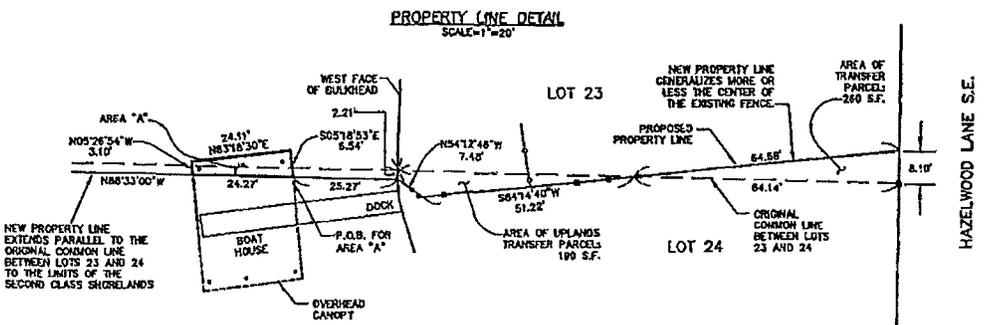
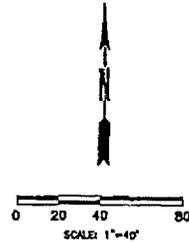
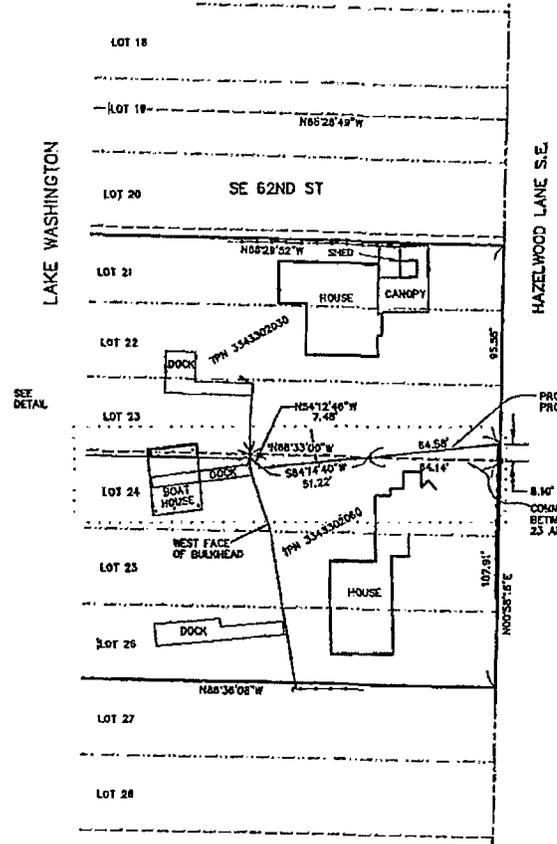
LOT 21, EXCEPT THE NORTH 4.23 FEET THEREOF AND LOTS 22 AND 23 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, TOGETHER WITH SECOND CLASS SHORELANDS, AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON, AS TO LOTS 22 AND 23; SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

TOGETHER WITH THAT PORTION OF LOT 24 LYING NORTH OF THE FOLLOWING DESCRIBED LINE:  
 COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET;  
 THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23 AND THE POINT OF BEGINNING;  
 THENCE CONTINUING SOUTH 84°14'40" WEST A DISTANCE OF 51.22 FEET TO THE WESTERN EDGE OF A CONCRETE BULKHEAD;  
 THENCE NORTH 88°33'00" WEST TO THE LIMITS OF SAID SECOND CLASS SHORELANDS.

EXCEPT THAT PORTION OF LOT 23 LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:  
 COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET TO THE POINT OF BEGINNING;  
 THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23;

**SURVEYORS NARRATIVE:**  
 THE PURPOSE OF THIS RECORD OF SURVEY IS TO SHOW THE COURT ORDERED PROPERTY LINE COMMON TO THE SUBJECT PARCELS, FOR INFORMATION PERTAINING TO THE ORIGINAL DETERMINATION OF THE PARCEL BOUNDARIES BY THE SURVEYOR, PRIOR TO SAID COURT ORDER. SEE RECORD OF SURVEY PAGES 85 AND 86, AND RECORDED UNDER KING COUNTY RECORDING NUMBER 2008072390001

**ORIGINAL LEGAL DESCRIPTIONS:**  
 SEE KING COUNTY RECORD OF SURVEY RECORDED UNDER RECORDING NO. 2008072390001.



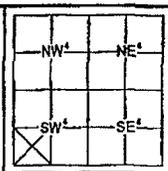
- LEGEND**
- WOOD FENCE
  - CHAINLINK FENCE
  - TAX PARCEL NUMBER
  - SET TACK IN LEAD WITH WASHER STAMPED "BVP 17576" ON CONCRETE BULKHEAD
  - SET REBAR AND CAP STAMPED "PLS 17576"
  - P.O.B.

RECORDER NO. \_\_\_\_\_  
**RECORDER'S CERTIFICATE**  
 FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ AT \_\_\_\_\_ M IN BOOK \_\_\_\_\_ OF SURVEYS AT PAGE \_\_\_\_\_ AT THE REQUEST OF BEN V. PETERSEN  
 COUNTY RECORDER / AUDITOR \_\_\_\_\_

**LAND SURVEYOR'S CERTIFICATE**  
 THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF: LARRY PETERSON  
 IN \_\_\_\_\_ JULY \_\_\_\_\_ 2010  
 BEN V. PETERSEN, CERTIFICATE NO. 17676



**BOUNDARY SURVEY FOR**  
 LARRY PETERSON  
 6220 HAZELWOOD LANE SE  
 BELLEVUE, WA 98005



**INDEXING INFORMATION**  
 SW 1/4 SW 1/4  
 SECTION: 20  
 TOWNSHIP: 24N  
 RANGE: 5E  
 COUNTY: KING

**PLS, Inc.** 355 NW Otisum Boulevard, #281 Issaquah, Washington 98027 (425) 312-8276 (fax) 313-3779  
 DRAWN BY: \_\_\_\_\_ DATE: JULY 26, 2010 JOB NO.: 8048  
 CHECKED BY: \_\_\_\_\_ SCALE: 1" = 40' SHEET: 1 OF 1  
 BVP

10/3/10 CAS

**FILED**  
KING COUNTY, WASHINGTON

OCT 14 2010

SUPERIOR COURT CLERK  
JENNIFER L. SCHNARR  
DEPUTY

Judge Carol Schapira

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

GREGG SMITH and KELLY SMITH, husband and wife,

Plaintiff,

v.

LARRY L. PETERSON and SUSAN PETERSON,  
husband and wife and the marital community  
composed thereof,

Defendants.

No. 08-2-22750-2 SEA

**JUDGMENT**

THIS MATTER coming on for trial before the undersigned judge of the King County Superior Court on the 25<sup>th</sup> day of January, 2010; the court having heard and considered the testimony and evidence admitted at trial and the briefs, memoranda, and argument of counsel; the court having made and entered on the record its Memorandum Decision at the close of evidence and argument on January 28, 2010; the court having heretofore made and entered its Findings of Fact and Conclusions of Law; now, therefore, it is hereby,

ORDERED, ADJUDGED and DECREED as follows:

1. The center line of the posts supporting the existing fence (including the "veer" to the northwest) that intersects with the legal subdivision line common to the properties of plaintiffs

JUDGMENT -1

C:\Users\schapic\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\OFX3CRZ9\jment (easement) (2) (4).doc 10/13/10 (s) #26530.001

OSERAN HAHN SPRING STRAIGHT & WATTS P.S.  
10980 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

**ORIGINAL**

1 and defendants described in paragraphs 3 and 4 of the Findings of Fact herein, is now and shall  
2 hereafter be the legal boundary between the two parcels with respect to the parties hereto and their  
3 heirs, successors, and assigns insofar as the uplands are concerned. The center line should be a  
4 straight line to the “veer” and from the “veer” to the northwest. The post’s center line should be  
5 “averaged” by the surveyor to accomplish this.

6         2.       The common upland boundaries between the properties of plaintiffs and  
7 defendants, binding upon them and their heirs, successors, and assigns, shall be that upland  
8 boundary shown by the PLS, Inc. survey, Job No.8049, dated July 26, 2010, Revised August 4,  
9 2010, a true copy of which is attached hereto and incorporated herein by reference as if fully set  
10 forth. Petersons are directed to obtain recordation of that survey with the Auditor of King County,  
11 Washington and file a notice of the recording number of the survey in this file and give notice to  
12 the other party of same. Either party may record with the Auditor of King County a copy of this  
13 Judgment.

14         3.       The existing fence in the vicinity of the boundary by acquiescence established by  
15 this judgment may be maintained exclusively by Petersons and their successors and assigns (but  
16 they are not obligated to do so). At such time as the current fence is replaced, the parties may elect  
17 to agree to establish a new fence centered on the line established by this judgment, or either party  
18 may elect to build their own fence on their side of the common boundary line solely on their own  
19 property.

20         4.       The Smiths’ claims for boundary by acquiescence or adverse possession or any  
21 other claim of ownership with respect to any portion of the shorelands of the Peterson property  
22

1 located south of the common boundary between Smith and Peterson parcels as described in  
2 paragraphs 3 and 4 of the Findings of Fact entered this date are hereby DENIED.

3 5. The common boundary between the Smith and Peterson properties as described in  
4 paragraphs 3 and 4 of the Findings of Fact herein with respect to the shorelands beginning at the  
5 west face of the existing concrete bulkhead shall be as follows: From the point of intersection of  
6 the fence line as established by PLS, Inc. by survey, with the west face of the existing bulkhead  
7 wall, thence westerly in a straight line extended parallel with adjoining subdivision shoreland lines.

8 6. Petersons claim of acquisition of prescriptive easement to a portion of the Smith  
9 property described as the shoreland located directly beneath the canopy and pilings to the extent  
10 that same encroach upon the Smith Property as shown by the PLS, Inc. survey recorded with the  
11 Auditor of King County, Washington under Auditor's file no. 20080723900001 is DENIED as an  
12 exclusive appurtenant easement.

13 7. For over 50 years, a portion of the north canopy on the dock in the vicinity of but  
14 mostly southerly of the common subdivision line between the Peterson and Smith parcels,  
15 together with three supporting pilings, has been located on the north or Smith side of the  
16 shorelands of the legal subdivision line as shown on the PLS survey. ("Smith pilings") The  
17 canopy is attached to the pilings but is not a fixture. It is a metal cover on top of wood that can  
18 be moved, removed or modified. It would be wasteful to remove it, but it does not affect the  
19 ownership of the shorelands below or the Smith pilings.

20 8. The Peterson's may continue to use the slip on the North side of the dock,  
21 although the slip may cross slightly the Smith south boundary in the water. The  
22 Smiths own the Smith pilings which are in their shorelands as shown on the survey  
adopted by the Court .

JUDGMENT -3

C:\Users\schapic\AppData\Local\Microsoft\Windows\Temporary  
Internet Files\Content.Outlook\OFX3CRZ9\jment (easement) (2)  
(4).doc 10/13/10 (s) #26530.001

OSERAN HAHN SPRING STRAIGHT & WATTS P.S.  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

1 9. Neither party is the prevailing party and neither are awarded fees or costs.

2 10. The parties shall equally share the costs of the PLS, Inc. survey work since  
3 July 1, 2010, in regard to the survey that is attached to and incorporated into this Judgment. Either  
4 party may, on motion, seek supplemental order and judgment from the court enforcing this equal  
5 contribution provision.

6 11. This Judgment runs with the land of both parties and is binding upon their  
7 heirs, successors and assigns.

8 DATED this \_\_13th\_\_ day of October, 2010.

9 

10 \_\_\_\_\_  
11 THE HONORABLE CAROL SCHAPIRA

LEGAL DESCRIPTION AREA "A"

COMMENCING AT THE SOUTHEAST CORNER OF LOT 23 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET;  
 THENCE SOUTH 84°13'50" WEST A DISTANCE OF 64.48 FEET TO THE SOUTH LINE OF SAID LOT 23;  
 THENCE CONTINUING SOUTH 0°43'50" WEST A DISTANCE OF 52.50 FEET;  
 THENCE NORTH 4°54'27" WEST, A DISTANCE OF 6.61 FEET TO THE WESTERLY EDGE OF A CONCRETE BULKHEAD;  
 THENCE NORTH 88°33'00" WEST, PARALLEL TO THE COMMON LINE OF SAID LOT 24 AND LOT 23, A DISTANCE OF 25.27 FEET TO THE EAST LINE OF A BOATHOUSE ROOF OVERHANG AS IF NOW EXISTS AND THE POINT OF BEGINNING;  
 THENCE CONTINUING NORTH 88°33'00" WEST A DISTANCE OF 24.27 FEET TO THE WEST LINE OF SAID BOATHOUSE ROOF OVERHANG;  
 THENCE NORTH 05°26'54" WEST A DISTANCE OF 3.10 FEET TO THE NORTH LINE OF SAID BOATHOUSE ROOF OVERHANG;  
 THENCE NORTH 83°18'30" EAST A DISTANCE OF 24.11 FEET TO THE EAST LINE OF SAID BOATHOUSE ROOF OVERHANG;  
 THENCE SOUTH 05°18'53" EAST A DISTANCE OF 6.54 FEET TO THE POINT OF BEGINNING.

RECORD OF SURVEY

SE 1/4, SW 1/4, SEC. 20, TWP. 24 N., RGE. 5 E., W.M.  
 KING COUNTY, WASHINGTON

BOOK \_\_\_\_\_ PG. \_\_\_\_\_  
 REC. NO. \_\_\_\_\_  
 LOTS 21-26, BLOCK A, C.D. HILLMAN'S LK WA. GARDEN OF EDEN ADD. #3

LEGAL DESCRIPTION SE 62ND STREET  
 (DERIVED FROM THE LEGAL DESCRIPTIONS FOR TAX PARCEL NUMBERS 3343302030 AND 3343302010)

THE SOUTH 20.75 FEET OF LOT 19, ALL OF LOT 20 AND THE NORTH 4.25 FEET OF LOT 21 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

NEW LEGAL DESCRIPTION TAX PARCEL NO. 3343302060

LOTS 24, 25 AND 26 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, TOGETHER WITH SECOND CLASS SHORELANDS AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON; SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

TOGETHER WITH THAT PORTION OF LOT 23 LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:  
 COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET TO THE POINT OF BEGINNING;  
 THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23;

EXCEPT THAT PORTION OF LOT 24 LYING NORTH OF THE FOLLOWING DESCRIBED LINE:  
 COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET;  
 THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23 AND THE POINT OF BEGINNING;  
 THENCE CONTINUING SOUTH 84°14'40" WEST A DISTANCE OF 51.22 FEET;  
 THENCE NORTH 54°12'48" WEST A DISTANCE OF 7.48 FEET TO THE WESTERLY EDGE OF A CONCRETE BULKHEAD;  
 THENCE NORTH 06°33'00" WEST TO THE LIMITS OF SAID SECOND CLASS SHORELANDS.

NEW LEGAL DESCRIPTION TAX PARCEL NO. 3343302030

LOT 21, EXCEPT THE NORTH 4.25 FEET THEREOF AND LOTS 22 AND 23 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, TOGETHER WITH SECOND CLASS SHORELANDS, AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON, AS TO LOTS 22 AND 23; SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

TOGETHER WITH THAT PORTION OF LOT 24 LYING NORTH OF THE FOLLOWING DESCRIBED LINE:  
 COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET;  
 THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23 AND THE POINT OF BEGINNING;  
 THENCE CONTINUING SOUTH 84°14'40" WEST A DISTANCE OF 51.22 FEET;  
 THENCE NORTH 54°12'48" WEST A DISTANCE OF 7.48 FEET TO THE WESTERLY EDGE OF A CONCRETE BULKHEAD;  
 THENCE NORTH 06°33'00" WEST TO THE LIMITS OF SAID SECOND CLASS SHORELANDS.

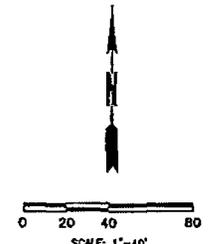
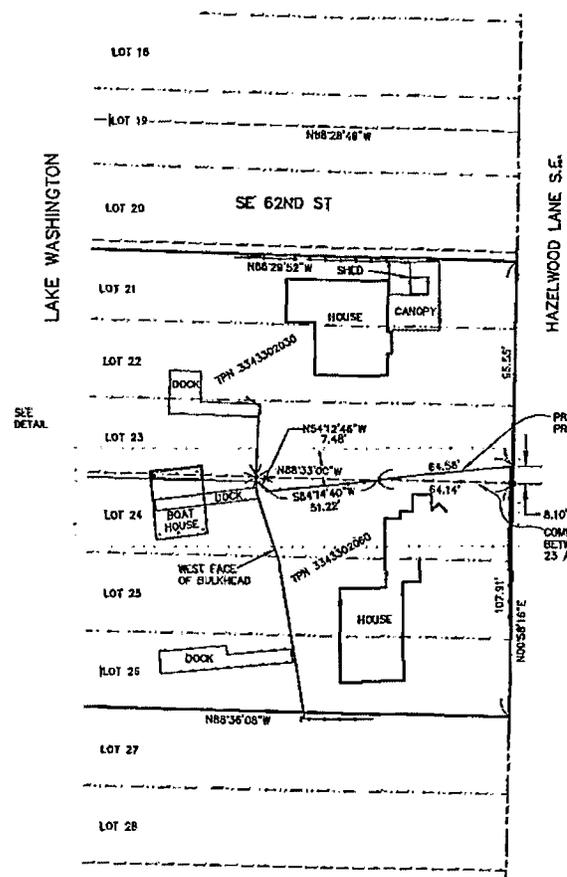
EXCEPT THAT PORTION OF LOT 23 LYING SOUTH OF THE FOLLOWING DESCRIBED LINE:  
 COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 23;  
 THENCE NORTH 00°58'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.10 FEET TO THE POINT OF BEGINNING;  
 THENCE SOUTH 84°14'40" WEST A DISTANCE OF 64.58 FEET TO THE SOUTH LINE OF SAID LOT 23;

SURVEYORS NARRATIVE:

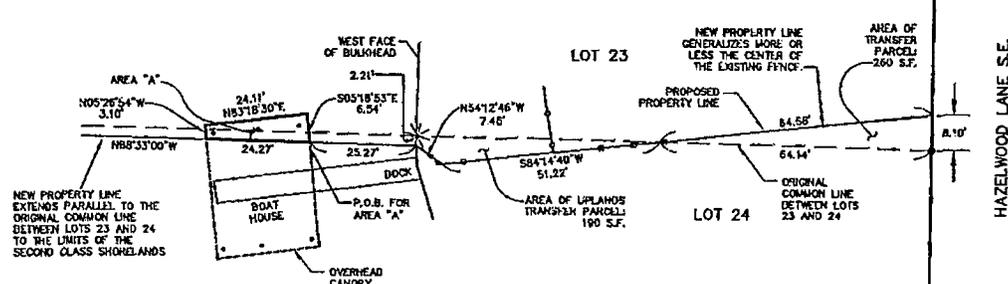
THE PURPOSE OF THIS RECORD OF SURVEY IS TO SHOW THE COURT ORDERED PROPERTY LINE COMMON TO THE SUBJECT PARCELS, FOR INFORMATION PERTAINING TO THE ORIGINAL DETERMINATION OF THE PARCEL BOUNDARIES BY THE SURVEYOR, PRIOR TO SAID COURT ORDER. SEE RECORD OF SURVEY PAGES 55 AND 56, AND RECORDED UNDER KING COUNTY RECORDING NUMBER 2008072390001

ORIGINAL LEGAL DESCRIPTIONS:

SEE KING COUNTY RECORD OF SURVEY RECORDED UNDER RECORDING NO. 2008072390001.



PROPERTY LINE DETAIL  
 SCALE=1"=20'



LEGEND

- WOOD FENCE
- CHAMBERK FENCE
- TAX PARCEL NUMBER
- SET TACK BY LEAD WIRE WASHER STAMPED "BVP 17676" ON CONCRETE BULKHEAD
- SET REBAR AND CAP STAMPED "PLS 17676"
- P.O.B. POINT OF BEGINNING

REVISED AUG. 4, 2010

<p>RECORDER NO. _____</p> <p>RECORDER'S CERTIFICATE</p> <p>FILED FOR RECORD THIS _____ DAY OF _____ 20 AT _____ M IN BOOK _____ OF SURVEYS AT PAGE _____ AT THE REQUEST OF BEN V. PETERSEN</p> <p>COUNTY RECORDER / AUDITOR _____</p>	<p>LAND SURVEYOR'S CERTIFICATE</p> <p>THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF: LARRY PETERSON</p> <p>IN _____ JULY _____ 2010</p> <p>BEN V. PETERSEN, CERTIFICATE NO. 17676</p>		<p>BOUNDARY SURVEY FOR</p> <p>LARRY PETERSON          6220 HAZELWOOD LANE SE          BELLEVUE, WA 98006</p>		<p>INDEXING INFORMATION</p> <p>SW 1/4 SW 1/4</p> <p>SECTION: 20          TOWNSHIP: 24N          RANGE: 5E          COUNTY: KING</p>	<p><b>PLS, Inc.</b>          Professional Land Surveyors</p> <p>355 HWY 600000, BELLINGHAM, WA 98201          (425) 313-9378 (fax) 313-9379</p> <p>DRAWN BY: _____ DATE: JULY 26, 2010 JOB NO.: 8049          CHECKED BY: BVP SCALE: 1" = 40' SHEET: 1 OF 1</p>
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10/3/10 PAB