

35520-5-II

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

DON W. TAYLOR and
MONIQUE TAYLOR, husband
and wife,

Appellants,

vs.

VICKI MARTIN, a married
woman dealing with her sole
and separate property, and
the CITY OF OLYMPIA,

Respondents.

NO. ~~██████████~~

THURSTON COUNTY
SUPERIOR COURT
NO.: 04-2-00217-3

07 MAR 23 PM 1:14
STATE OF WASHINGTON
BY DEPUTY
Clerk of Superior Court

APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY
THE HONORABLE JOHN R. HICKMAN, JUDGE

BRIEF OF APPELLANTS

Frank W. Groundwater, WSBA #15970
Of Fristoe, Taylor & Schultz, Ltd., P.S.
Attorneys for Appellants

Office and Post Office Address:
Fristoe, Taylor & Schultz, Ltd., P.S.
Suite 1, Professional Arts Building
206 11th Avenue SE
Olympia, WA 98501
Telephone: (360) 357-5566

PM 3/22/07

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This is an Appeal from the Superior Court of the State of Washington for Thurston County which granted the Respondent, City of Olympia's Motion for Summary Judgment dismissing all claims against the City.

I. PRELIMINARY STATEMENT

The Appellants will hereafter be referred to as "Taylor". The Respondent Vicki Martin will hereafter be referred to as "Martin". The Respondent City of Olympia will hereafter be referred to as "Olympia". The real estate involved in these proceedings is Lakemoor Lane which is located within the plats of Lakemoor 1 and Lakemoor 3.

(See Maps Appendix 1, 2, 3, and 4)

II. ASSIGNMENTS OF ERROR

Taylor assign as error the entry by the Thurston County Superior Court of the Order Granting Defendant City of Olympia's Motion for Summary Judgment which reads in part as follows:

"Based on the foregoing, the Court finds there is no genuine issue as to any material fact and Defendant City of Olympia is entitled to a summary judgment as a matter of law. Now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendant City of Olympia's Motion for Summary Judgment shall be and is hereby granted and this matter is hereby dismissed with prejudice as to Defendant City of Olympia only."

This Order was signed on October 13, 2006 and filed with the Clerk on October 17, 2006. (CP 176-178, Appx. 5)

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was Lakemoor Lane dedicated as a city street (lane) by the plats of Lakemoor 1 and 3.
2. Did Lakemoor Lane become a city street (lane) by reason of common law dedication?
3. Is the City of Olympia, by reason of its acquiescence to the use of its easement (Lakemoor Lane),

liable for the collection and transportation of surface waters from the lots abutting thereon onto the Taylor lot?

4. If Lakemoor Lane is a city lane by reason of either dedication or common law dedication, was there an issue of fact with respect to whether Lakemoor Lane created a liability on the part of the City of Olympia because Lakemoor Lane conducted surface waters from the lots abutting thereon onto Taylor's lot.

IV. PROCEEDINGS BELOW

A. On February 4, 2004, Taylor filed a Complaint with the Thurston County Clerk seeking to enjoin Martin from collecting and discharging waters upon Lakemoor Lane which carried the waters onto the Taylors' lot. (CP 6-9.)

B. On November 4, 2005, an Order was entered permitting amendment to the Complaint and joining the City of Olympia as an additional party. (CP 28-29.)

C. On November 14, 2005, an Amended Complaint was filed. Taylor sought by said Amended

Complaint, an injunction permanently enjoining Martin and Olympia from their unlawful collection of surface waters and their discharge upon Taylor's lot. (CP 30-34.)

D. On December 21, 2005, Olympia filed its Answer to Amended Complaint. (CP 13-16.)

E. On August 23, 2006, Olympia filed its Motion for Summary Judgment. (CP 51-62.) This Motion was supported by the Declaration of Jeffery S. Meyers. (CP 78-120.), the Declaration of Amy Chastain, (CP 63-77.), and the Declaration of Victor L. Whitiger, PLS. (CP 47-50.)

F. Taylor's Response to the Motion for Summary Judgment was supported by the Affidavit of Don W. Taylor, (CP 138-166.), Affidavit of Edward Swan, (CP 132-134.), Affidavit of Gareth M. Johnson, (CP 167-173.), and Affidavit of Monique J. Taylor. (CP 135-137.)

G. Motion for Summary Judgment was argued and an Order Granting City of Olympia's Motion for Summary Judgment was entered on October 13, 2006 and

filed with the Clerk on October 17, 2006. (CP 176-178, Appx. 5)

H. On November 9, 2006, Taylor filed a Notice of Appeal to the Court of Appeals. (CP 179-184.)

I. A Motion for Voluntary Non-Suit as to Defendant Vicki Martin was filed on March 23, 2006. (CP 46.)

J. On January 16, 2007, a Judgment Granting Plaintiffs' Motion for Voluntary Non-Suit Against Defendant Vicki Martin was entered. (CP 198-199.)

V. FACTS

1. Bracy & Thomas provided survey services for the plats of Lakemoor. During the course of providing these services and the preparation of the plats of Lakemoor, a map showing a roadway easement was prepared and recorded under Thurston County Auditor's File Number 768000 in Volume 432 at page 521. This roadway, amongst other things, provides access to Lots 96-100, 107, 109 and 111 of the Plat of Lakemoor, Division 1. It also provides access to

the easterly portion of what is now Lot 1 of Lakemoor, Division 3. The north boundary of this roadway is six feet (6') West and 62.48 feet North of the Southeast corner of what is now Lot 1 of Lakemoor Division 3 (Affidavit Gareth M. Johnson, CP 167-173, Appx. 1, 2, 3 and 4.)

2. The map of Lakemoor 1 was recorded on September 2, 1966. The map of Lakemoor 3 was recorded on August 1, 1968. The north 62.48 feet of Lakemoor Lane is included within Lot 1 of Lakemoor Division 3. The plat map shows Lakemoor Lane extending from the Southeast 64.48 feet of Lot 1 of Lakemoor 3 South and West to Lakemoor Drive. (CP 167-173, Appx. 1, 2, 3 and 4)

3. The dedication of the plat maps of Lakemoor 1 and Lakemoor 3 material hereto provide as follows:

"Ken Lake Development Company, a corporation, owner in fee simple of the land hereon and platted hereby, hereby declares this plat and dedicates to the use of the public forever, all streets, **lanes**, drives, etc., shown on the plat hereon for public purposes, not inconsistent with the use

thereof for public highway purposes; also the right to make all necessary slopes or cuts or fills upon the lots and block shown on this plat in all reasonable original grading of all streets, lanes, drives, etc. shown hereon, and also dedicates to the public the easements shown hereon for the purpose of maintaining, operating, and repairing the utilities contained in said easements;" (emphasis ours) (CP 140-141.)

The protective covenants and dedications applicable to Lakemoor provide in part as follows:

"E. **Easements**. ***An easement is hereby further reserved for and granted to the City of Olympia for all drainage and sewer line connections shown on the plat other than those located within the public ways shown on plat for the purpose of installing, laying, constructing, renewing, operating, and maintaining drainage and sewage facilities for said subdivision and other property adjacent thereto."

"O. **Sewage Disposal**. A sewage system and disposal system connecting to the sewage system of the City

of Olympia is provided to each lot by sewer lines owned by the City of Olympia, and no private septic tank or cess pool system shall be constructed on or permitted to remain on any lot within the subdivision." (CP 141.)

4. The homes constructed on Lots 96-99 of Lakemoor 1 are constructed upon a bench. Don Taylor estimated these homes to be 50-70 feet above the grade of Lakemoor Place which is the street on the Easterly boundary of said lots. Access to these homes by automobile from Lakemoor Place is impossible. All of these homes are accessed by Lakemoor Lane. (CP 142.)

5. The Taylors purchased Lot 97, Lakemoor 1, in November, 1969. They moved onto the property shortly before Thanksgiving 1969. The Taylors home was the only home on Lots 96-100 (the lots of the Easterly side of Lakemoor Lane) in 1969. The home of David and Wendy Stephens was in existence in 1969. This home is located on that portion of Lots 101 and 109 of Lakemoor 1 lying

Northerly of Lakemoor Lane. This lot is now owned by Vicky Martin. The home of Frances D. Baker and Marie A. Baker was located on the property which is now Lot 1 of Lakemoor 3. At the time the Taylors purchased their lot and moved onto the same, Lakemoor Lane was paved. (CP 138-166.)

6. There is a sanitary sewer running North and South along the Westerly boundaries of Lots 91-99 of Lakemoor 1. The sewer is installed under Lakemoor Lane. A lateral extends along the boundary to Lots 97 and 98 to the sewer on Lakemoor Place. There is manhole to the sewer at the intersection of the sewer and the common boundary between Lots 97 and 98 of Lakemoor 1. This sewer removes sewage discharged from Lots in Lakemoor 1 and Lakemoor 3 abutting upon the same and lying to the West. The sewer connection for Lots 96-100 is the sewer that lies in Lakemoor Place and Lakemoor Drive along the Easterly boundary of said lots. (CP 142.)

At the time the Taylors purchased Lot 97 and the commencement of their occupation of their home, there was no flooding. As time passed, residences were built on the lots lying to the West of Lot 97. As the lots were improved, water was collected along the Easterly edge of Lakemoor Lane which acted as a trough directing the water to Lot 97. (CP 142-143.)

In November 2003, Vicki Martin connected the downspouts from the Easterly edge of the roof of her house to a pipe which carried the water East and deposited it onto Lakemoor Lane. (CP 143) (Affidavits of Monique Taylor, CP 135-136, and Don W. Taylor, CP 142-143.)

7. The City of Olympia uses Lakemoor Lane to access its sanitary sewer and to pick up garbage from Lots 96-100. (CP 143.)

8. Lakemoor Lane comes to an end in the middle of the lot owned by Edward and Shirley Swan. (Lot 96 Lakemoor 1) Most of the vehicles that use Lakemoor Lane

use the circular driveway on Lot 97 as a turnaround cul-de-sac. (Affidavit of Monique Taylor, CP 136.)

The residents of Lots 96-100 of Lakemoor 1 use Lakemoor Lane to access their homes. Services and installations provided by telephone and television workman use Lakemoor Lane. Deliveries made by United States Postal Service, FedEx and UPS use Lakemoor Lane. Services and repair people, i.e., Acme Fuel, Woolett Plumbing, and Sunset Air use Lakemoor Lane. Non-residents who apparently are out for a drive, drive onto Lakemoor Lane. People campaigning for election or re-election use Lakemoor Lane. Emergency services, i.e., ambulance, police, and fire departments, and people who come to examine or service this sewer use Lakemoor Lane. The use of Lakemoor Lane is similar to the use of other streets in the Lakemoor plats. (CP 138-166.)

9. Edward Swan and his wife, Shirley, are the owners of Lot 96 of Lakemoor 1. Ed Swan has observed workers from the City of Olympia use Lakemoor Lane to

access the sewer line which runs in the center of Lakemoor Lane in the vicinity of Lots 96 and 97 of Lakemoor 1. Garbage trucks pick up garbage cans on a weekly basis for those who reside on the East side of Lakemoor Lane from Lot 96 South. The cans are deposited each week along the Southerly border of Lakemoor Lane pursuant to instructions from the City of Olympia. Ed Swan has observed the City of Olympia repair at least one chuck hole in Lakemoor Lane. This occurred about five (5) years ago after Ed Swan notified the City of Olympia of the fact that his wife had tripped and fell, which fall was caused by the chuck hole. Olympia, after being notified of this accident repaired this hole. (Affidavit of Ed Swan, CP 132-134, Affidavit of Monique Taylor, CP 135-137, and Affidavit of Don W. Taylor, CP 138-166.)

10. At the time the Taylors purchased Lot 97, they experienced no flooding. As time passed, residences were built on the lots lying to the West of Lot 97. As these lots were improved, water collected on the Westerly edge of Lakemoor Lane, which acted as a trough and directed the

water onto the Taylor lot. The flooding became more severe with the connection of the downspouts from the Martin lot to Lakemoor Lane. Water ultimately seeped into the crawl space under the Taylor house advancing into the lower level of their home. The Taylors took remedial action to divert the water from their home. (CP 142-143.)

VI. ARGUMENT

1. **Summary Judgment Standard**: If there is no genuine issue as to any material fact, the moving party (City of Olympia) is entitled to Summary Judgment. The Summary Judgment is based upon the pleadings, depositions, answers to interrogatories, and admissions. Tran v. State Farm Fire & Casualty, Co., 136 Wn.2d. 214, 223, 961 P.2d. 358 (1998). However, a Summary Judgment Motion can only be sustained if there is no genuine issue of material fact, looking at all evidence and inferences in a light most favorable to the non-moving party. Shah v. Allstate Insurance Co., 130 Wn.App. 74 (2005) at page 80.

2. **Ownership of Land**: The City of Olympia attempts to defeat the claim of Plaintiffs by arguing the Dedicators of the plats of

Lakemoor did not own the land upon which the lane is constructed. The southerly portion of Lakemoor Lane is constructed on lots 107 and 109 of the plat of Lakemoor Division 1. The easterly portion of Lakemoor Lane includes parts of Lots 96 through 100 and Lots 107, 109 and 111 of Lakemoor Division 1 and Lot 1 of Lakemoor Division 3. Clearly, at the time of creation of Lakemoor Lane, as shown on the Roadway Easement Map and the dedication as set forth in the dedication of Lakemoor Division 3, the Dedicators in fact owned the land crossed by Lakemoor Lane.

3. **Plat Dedication**: RCW 58.17.165 pertains in part to dedications. It provides in part as follows:

"If the plat or short plat is subject to a dedication, the certificate or separate written instrument shall contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or any corporation, public or private as shown on the plat or short plat . . ."

It further provides:

"Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes as a quit claim deed to said donee or donees, grantee or grantees for his, her

or their use for the purpose intended by the donors or grantors as aforesaid."

Johnston v. Medina Improvement Club, 10 Wn. (2d) 44 (1941) at page 56, states in part as follows:

"Dedication originates in the voluntary donation of the owner or seller, and when the intention of the owner to dedicate is clear, manifest, and unequivocal, whether by a written instrument or by some act or declaration of the owner manifesting his clear intent to devote the property to public use, it becomes effective for that purpose. *Shell v. Poulson*, 23 Wash. 535, 63 Pac. 204." *Corning v. Aldo*, 185 Wash. 570, 55 P. (2d) 1093.

4. **Common Law Dedication**: Common law dedication is

described in Forrester v. Fisher, 16 Wn. P.2d., 516 (1943) as follows:

"There are two things which are absolutely essential to a valid common law dedication: (1) An intention on the part of the owner 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 (2) an acceptance of the offer by the public. In making a dedication, no particular formalities are necessary. The statute of frauds is not applicable in such cases, and therefore, a deed or other instrument of writing is not necessary, though, of course, a dedication may be made by deed. The intention to make a dedication may be shown by particular

acts of the owner, such as throwing open his land to public travel, or platting it and selling lots with reference to the plat, or acquiescing in or positively assenting to its use by the public, or, in short, by any act positively and unequivocally indicating such intention." Seattle v. Hill, 23 Wash. 92, 97, 62 Pac. 446. Forrester v. Fisher, supra p. 338. (Emphasis ours).

Richardson v. Cox, 108 Wn.App. 881, 26 P.3d. 970 at

pp. 890-891, states in part as follows:

"[4,5] A common law dedication is the designation of land, or an easement on such land, by the owner, for the use of the public, which has been accepted for use by or on behalf of the public. A dedication may be either express (i.e., the intent is expressly set forth in a deed, or by oral or written declaration) or implied (i.e., evidenced by some act or course of conduct by the property owner from which a reasonable inference of dedication may be drawn). *Black's Law Dictionary* 412 (6th ed. 1990).

By dedicating the property, the owner reserves no rights that would either be incompatible or interfere with the full public use. The intent to dedicate property for public use is evidenced by presenting for filing a final plat or short plat that shows the dedication on its face. Acceptance by the public is evidenced by approval of the final plat or short plat for

filing with the appropriate governmental unit. RCW 58.17.020(3)."

The intention on the part of the developer owner to dedicate Lakemoor Lane as a public street (lane) is clearly shown by the dedication on Lakemoor Division 3 and the establishment and construction of the roadway easement. The City of Olympia has approved this dedication by its acceptance of the plat of Lakemoor 3. Any owner of any lot directly impacted by Lakemoor Lane clearly expressed their intention to join in the dedication by their acquiescence in the dedication, the construction of the road, and their use of the road. This dedication was clearly accepted by the public by its use of the road. The City of Olympia has accepted the dedication by its acquiescence in the construction and use of Lakemoor Lane.

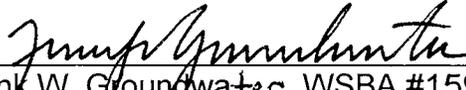
5. **Olympia's Liability Re: Casting of Water Onto Plaintiffs Property:** There is an issue of fact with respect to whether or not Lakemoor Lane. The facts strongly support dedication of Lakemoor Lane as a public lane of the City. There is an issue of fact as to whether Olympia allowed the use of its sanitary sewer

easement to conduct the surface waters onto Plaintiffs lot. The use of the land encompassed within the sanitary sewer easement is sufficient to create liability on the City of Olympia. Rather than acting only to approve the plans of the developer, Olympia allowed the installation of the lane upon its property and the use of the property to collect and convey the water onto the Taylor lot, to their damage. Phillips v. King County, 136 Wn. 2d. 946, 968 P.2d. 871 (1998) at page 996.

VII. CONCLUSION

The Order and Judgment Dismissing the City of Olympia with prejudice from this action should be reversed and this matter should be remanded to the Superior Court with direction that it recognize Lakemoor Lane as a dedicated lane of Olympia and directing further proceedings with respect to the liability of the City of Olympia for the casting of waters upon the Taylor lot.

Respectfully submitted,



Frank W. Groundwater, WSBA #15970
Of Fristoe, Taylor & Schultz, Ltd., P.S.
Attorneys for Plaintiffs

LAKEMOOR DRIVE

NORTH LINE OF SW 1/4, SE 1/4, SW 1/4 SEC 20, T18N, R22W, W11N

BOUNDARY OF PLAT OF LAKEMOOR, DIV. 035

Recorded # 768200
11/13/13

107

109

111

99

98

97

96

LAKEMOOR PLACE

Scale 1" = 20'
11/13/13, 1967

MAP HOWARD

ROADWAY ENSEMBLE

HARRY & THOMAS
ENGINEERS
207 N. Washington
Olympia, Washington

A PORTION OF PLAT OF LAKEMOOR DIV. 035,
VOL. 15, P. 11 & 12, LAYS THE SOUTHWEST QUARTER OF
NORTHEAST QUARTER OF SOUTHWEST QUARTER
OF SEC. 20, T18N, R22W, W11N.

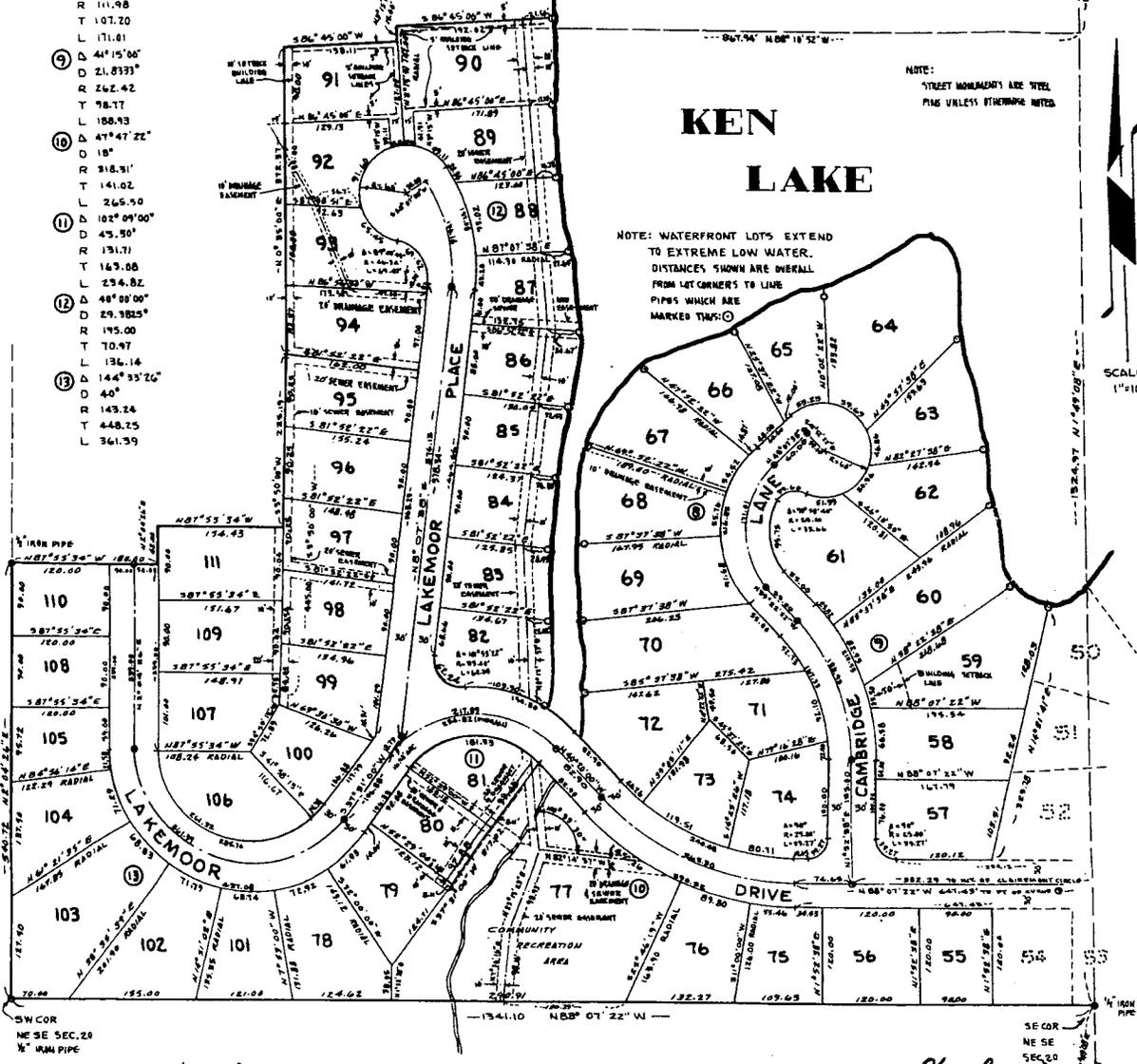
APPX-1

LAKEMOOR DIVISION ONE

SHEET TWO OF TWO

CURVE DATA

- ⑧ Δ 87°30'00"
D 51.1661'
R 111.98
T 107.20
L 171.61
- ⑨ Δ 41°15'00"
D 21.8333'
R 262.42
T 78.17
L 188.93
- ⑩ Δ 47°47'22"
D 18'
R 318.71'
T 141.02
L 265.50
- ⑪ Δ 102°09'00"
D 45.50'
R 131.71
T 163.08
L 234.82
- ⑫ Δ 48°08'00"
D 29.3825'
R 195.00
T 107.47
L 136.14
- ⑬ Δ 144°33'26"
D 40'
R 143.24
T 448.25
L 361.39



20'-21" C.M.C. FALLS IN LAKE

NOTE: STREET MONUMENTS ARE STEEL PINS UNLESS OTHERWISE NOTED

NOTE: WATERFRONT LOTS EXTEND TO EXTREME LOW WATER. DISTANCES SHOWN ARE OVERALL FROM LOT OWNERS TO LINE PIPES WHICH ARE MARKED THIS: ⊙

DEDICATION

KEN LAKE DEVELOPMENT COMPANY, A CORPORATION, OWNER IN FEE SIMPLE OF THE LAND HEREON AND PLATTED HEREBY, HEREBY DECLARES THIS PLAT AND DEDICATES TO THE USE OF THE PUBLIC FOREVER, ALL STREETS, LANES, DRIVES, ETC., SHOWN ON THE PLAT HEREON FOR PUBLIC PURPOSES, NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES; ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS OR FILLS UPON THE LOTS AND BLOCKS SHOWN ON THIS PLAT IN THE REASONABLE ORIGINAL GRADING OF ALL STREETS, LANES, DRIVES, ETC., SHOWN HEREON, AND ALSO DEDICATES TO THE PUBLIC THE EASEMENTS SHOWN HEREON FOR THE PURPOSE OF MAINTAINING, OPERATING, AND REPAIRING THE UTILITIES CONTAINED IN SAID EASEMENTS; AND DOES DEDICATE TO THE USE OF THE OWNERS OF LAKEMOOR THE RECREATIONAL AREAS SHOWN HEREON; AND DOES DECLARE THE PROPERTY COVERED HEREBY TO BE SUBJECT TO THE FURTHER DEDICATIONS AND RESTRICTIONS SET FORTH IN THE INSTRUMENT RECORDED HERewith UNDER THURSTON COUNTY AUDITOR'S RECEIVING NUMBER 746258.

IN WITNESS WHEREOF, DEDICATOR HAS CAUSED THIS INSTRUMENT TO BE EXECUTED THIS 2ND DAY OF SEPT. 1966.

SCALE: 1"=100'

KEN LAKE DEVELOPMENT COMPANY

BY: R. B. Swanson
ITS PRESIDENT

ATTEST: E. Robert Frisole
ITS SECRETARY

ACKNOWLEDGMENT

STATE OF WASHINGTON ss.
COUNTY OF THURSTON

ON THIS 2ND DAY OF Sept 1966, BEFORE ME PERSONALLY APPEARED RICHARD D. SWANSON AND E. ROBERT FRISTOLE, TO ME KNOWN TO BE THE PRESIDENT AND SECRETARY, RESPECTIVELY, OF KEN LAKE DEVELOPMENT COMPANY, THE CORPORATION THAT EXECUTED THE WITHIN AND FOREGOING INSTRUMENT AND ACKNOWLEDGED THE SAID INSTRUMENT TO BE THE FREE AND VOLUNTARY ACT AND DEED OF SAID CORPORATION, FOR THE USES AND PURPOSES THEREIN MENTIONED, AND ON OATH STATED THAT THEY WERE AUTHORIZED TO EXECUTE SAID INSTRUMENT.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

Kathleen Turner
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, RESIDING AT OLYMPIA.

EXAMINED AND APPROVED THIS 2ND DAY OF September, A.D., 1966.

Shirley Anderson
CITY CLERK

I CERTIFY THAT THERE ARE NO ASSESSMENTS LEVIED AGAINST THE PROPERTY SHOWN HEREON. SIGNED AND APPROVED THIS 2ND DAY OF Sept. A.D., 1966.

A. E. Marshall
CITY TREASURER

FILED FOR RECORD AT THE REQUEST OF Ken Lake Dev.
THIS 2ND DAY OF Sept A.D., 1966, AT 39 MINUTES PAST 3 O'CLOCK AND RECORDED IN VOLUME 65 OF PLATS AT PAGE 41-42, RECORDS OF THURSTON COUNTY, WASHINGTON.

C. Wesley Cook

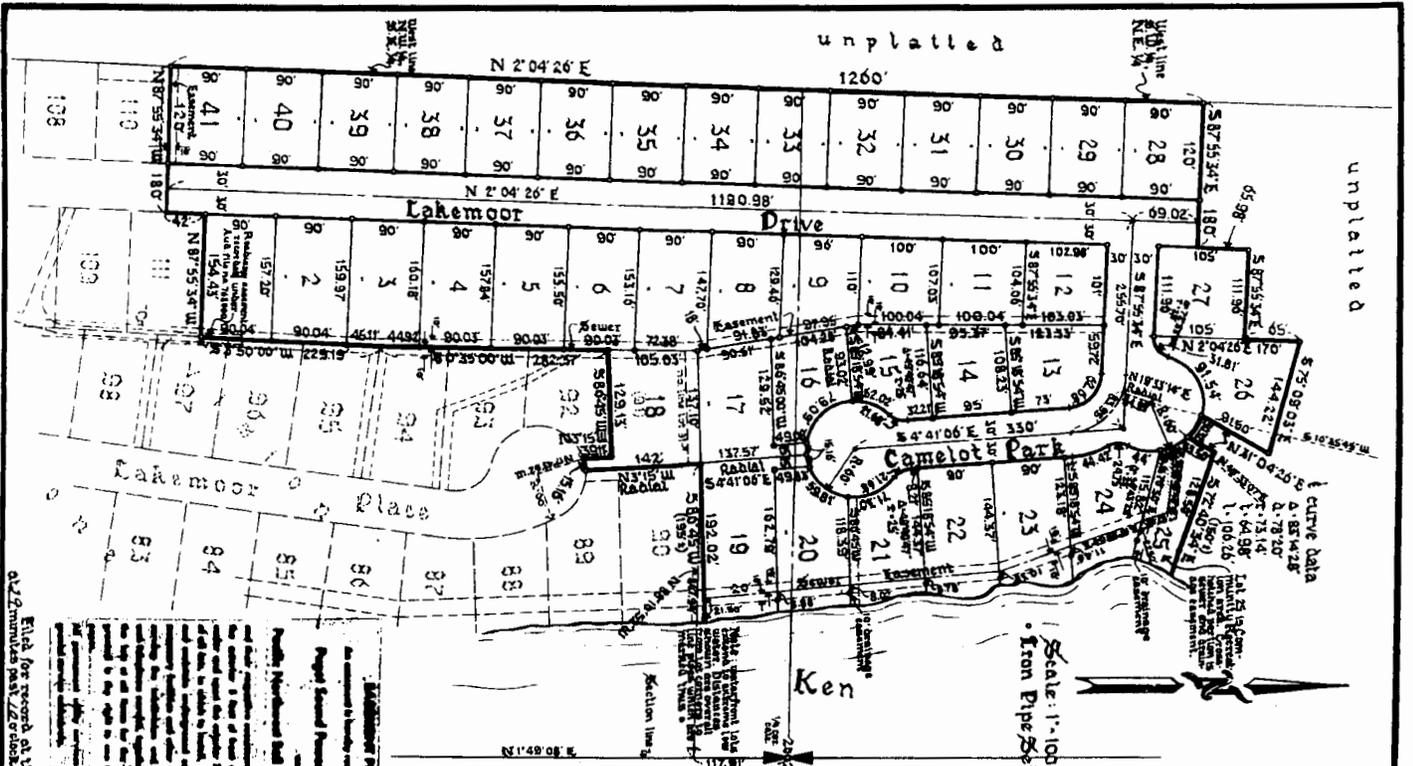
EXAMINED AND APPROVED THIS 2ND DAY OF SEPT., A.D., 1966.

I CERTIFY THAT THE TAXES ON THE PROPERTY SHOWN HEREON HAVE BEEN PAID. SIGNED AND APPROVED THIS 2ND DAY OF SEPT. A.D., 1966.

VOL-15 PG-42 AF # 746259

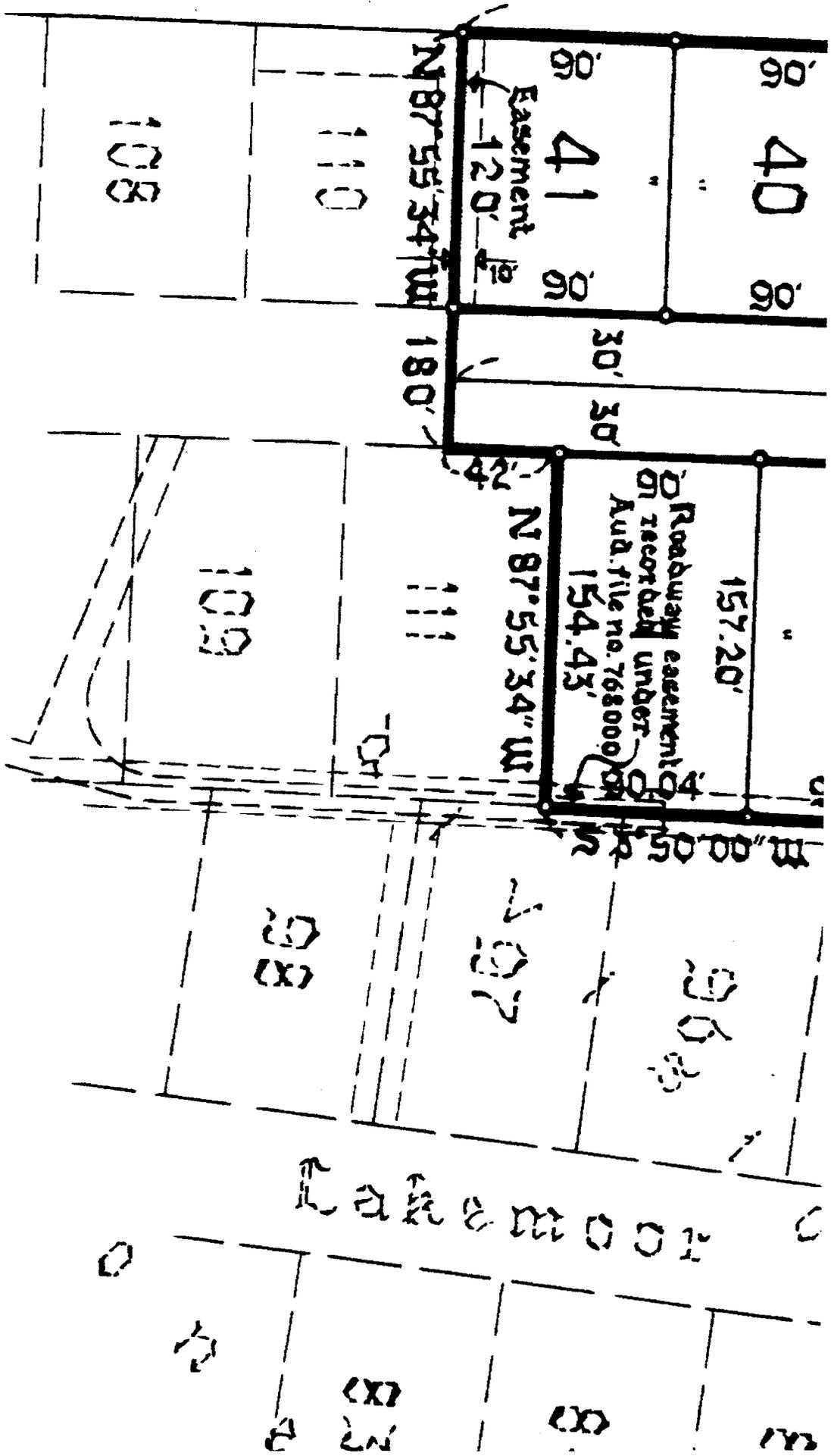
SHAW & THOMAS
LAND SURVEYORS
207 N. Washington
Apt. 2, Washington
D.C.

VOL. 15 PG. 91
785797



Description

That part of Section 20, Township 18 North, Range 2 West, Williams County, Minnesota, described as follows: Beginning at a point that lies 407.94 feet N 89° 02' 30" W of the corner of the quarter corner of Section 20 and 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 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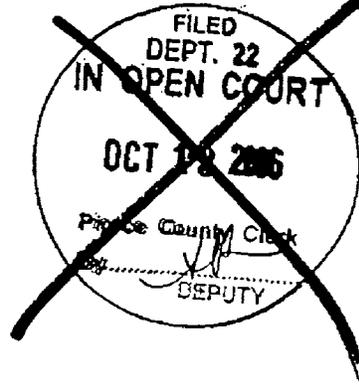
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SUPERIOR COURT
THURSTON COUNTY WASH

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BETTY J. GOULD CLERK

BY 3 DEPUTY



SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

DON TAYLOR and MONIQUE TAYLOR,
husband and wife,

Plaintiffs,

vs.

VICKI MARTIN, a married woman
dealing with sole and separate property,
and the CITY OF OLYMPIA,

Defendants.

NO. 04 2 00217 3

**ORDER GRANTING
DEFENDANT CITY OF
OLYMPIA'S MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER came on for hearing upon the motion of the defendant, City of Olympia, for an order granting summary judgment of dismissal as to this defendant.

Defendant City of Olympia appeared by and through its attorney, Jeffrey S. Myers of Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S., plaintiff appeared by and through the firm of Fristoe, Taylor and Schultz, Ltd., P.S., and defendant Vicki Martin appeared pro-se.

The Court having heard argument and considered the files and records herein including:

1. The following pleadings submitted by defendant City of Olympia:
 - a. Defendant's Motion for Summary Judgment;
 - b. Declaration of Amy Chastain;
 - c. Declaration of Victor L. Whittaker, P.L.S.;
 - d. Declaration of Jeffrey S. Myers; and

**ORDER GRANTING DEFENDANT
CITY OF OLYMPIA'S MOTION FOR
SUMMARY JUDGMENT - 1**

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RW JOHNSON RD., TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 357-3511

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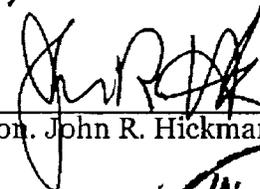
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- e. Defendant City of Olympia's Reply Brief in Support of Motion for Summary Judgment.
2. The following documents submitted by the plaintiff:
- a. Plaintiff's Memorandum Re: Summary Judgment
 - b. Declaration of Don W. Taylor
 - c. Declaration of Monique J. Taylor
 - d. Affidavit of Edward Swan
 - e. Affidavit of Gareth M. Johnson
3. The following documents, if any, submitted by defendant Vicki Marin, None.

Based on the foregoing the Court finds that there is no genuine issue as to any material fact and defendant City of Olympia is entitled to a summary judgment as a matter of law. Now, therefore, it is hereby

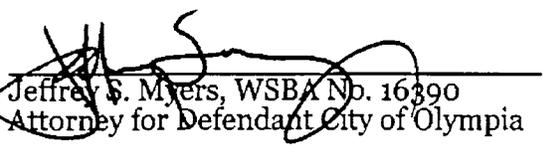
ORDERED, ADJUDGED AND DECREED that defendant City of Olympia's motion for summary judgment shall be and hereby is granted and this matter is hereby dismissed with prejudice as to defendant City of Olympia. *ONLY*.

DATED this 13th day of OCTOBER, 2006.



 Hon. John R. Hickman, Judge

Presented by:
 LAW, LYMAN, DANIEL,
 KAMERRER & BOGDANOVICH, P.S.

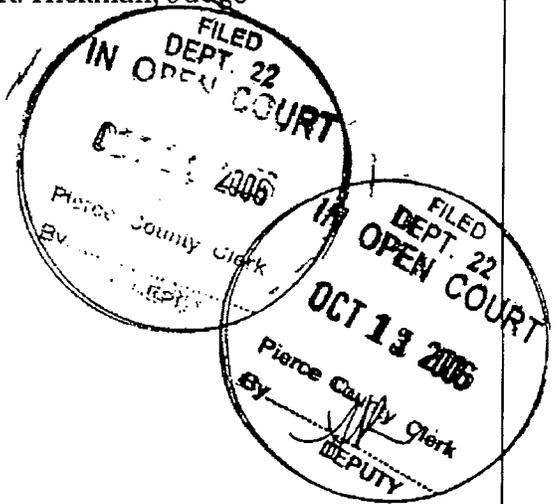


 Jeffrey S. Myers, WSBA No. 16390
 Attorney for Defendant City of Olympia

Approved for entry:
 FRISTOE, TAYLOR & SCHULTZ, P.S.



 FRANK W. GROUNDWATER
 WSBA # 15970



**ORDER GRANTING DEFENDANT
 CITY OF OLYMPIA'S MOTION FOR
 SUMMARY JUDGMENT - 2**

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 KAMERRER & BOGDANOVICH, P.S.
 ATTORNEYS AT LAW
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VICKIE MARTIN



Vickie Martin, Defendant pro se

ORDER GRANTING DEFENDANT
CITY OF OLYMPIA'S MOTION FOR
SUMMARY JUDGMENT - 3

S E A L E D

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
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PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 357-3511

