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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
Division III

Court of Appeals Case No. 315282

CITY OF KAHLOTUS et al. V. SHARON M. LIND

City of Kahlotus et al., Respondents/Plaintiff
Sharon M. Lind, Appellant/Defendant pro se

Appellant's Appeal Brief (corrected)

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Introduction

This is a Civil issue concerning the fee simple ownership and the use of a small section of property located in the vicinity of Kahlotus, Washington, and within Franklin County. This case has been heard in Superior Court of Franklin County, and there has been some review both in the Court of Appeals, and the Supreme Court of the State of Washington. The Appellant Sharon Lind has found, and continues to find, evidence supporting the Defenses position on this case, and has initiated this appeal to have it heard in the COA for judgment.

Assignment of Errors

1. The Lower Court erred in it's January 25, 2013 ORDER DENYING DEFENDANT SHARON LIND'S MOTION TO VACATE JUDGMENTS..... CP pages 7 and 57 when it denied the Appellant Sharon Lind's Motion to Vacate Judgment, which was presented to the Court as the MOTION TO SHOW CAUSE FOR MOTION TO VACATE / AMEND JUDGMENTS/ORDERS and subsequent

MOTIONS TO RECONSIDER following the December 31, 2012 hearing.

2. The Lower Court erred in it's January 25, 2013 ORDER GRANTING PLAINTIFF'S MOTION FOR CR 11 SANCTIONS and it's March 14, 2013 AMENDED ORDER GRANTING PLAINTIFF'S MOTION FOR CR 11 SANCTIONS AND JUDGMENT..... CP pages 50 and 18
3. The Lower Court erred in January 3, 2012 when it denied the Appellants Motion to Vacate with the ORDER DENYING DEFENDANT SHARON LIND'S MOTION TO VACATE JUDGMENTS, and the subsequent MOTIONS TO RECONSIDER..... CP page 94
4. The Lower Court erred when they granted on December 15, 2010 and May 9, 2011Orders in favor of the Plaintiff's in the Summary Judgments FINDINGS OF FACT, AND CONCLUSION OF LAW ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND JUDGMENT. .....CP pages 98 and 96

Statement of the Case

This is an ongoing Civil case relating to a property issue between the Appellant Sharon Lind, and the Respondents: The City of Kahlotus, and the Robert Hagans family. Much of this case can be found in the excerpts from the Court file presented for review.

In the summer of 2008 the City held a public meeting to discuss upcoming street improvements. Sharon Lind told the City that this was not a city street, and was her property. Following actions by the City and the Hagans family Lind then blocked this section of her property in 2009. The Hagans and the City initiated a lawsuit in Superior Court, and Lind was served in January 2010. The Plaintiff's called for the Summary Judgment in October of 2010, and the Court found in the favor of the Plaintiff's based primarily on a 1905 plat, a 1994 survey, and statements by the Hagans, disregarding the excellent work done by Attorney John Ziobro.

Following the Summary Judgment Lind found good evidence to call into question what the Plaintiff's had presented in Court. Evidence, which in the Defendant Lind's opinion would be enough to dismiss the case had it not already have gone to Summary Judgment. Lind has instead attempted to present this case for review in the Lower Court using CR 60 Motions to Vacate/Amend Judgments. With

their denial, Lind has now submitted this appeal to the COA for it's review and Judgment.

Statutes et al.

Article 1, Section 3 of the Constitution of the State of Washington ..... pg 18

Civil Rule 60..... ..... pg 15

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RCW 5.18.160 Requirement for each Plat filed for record **CP 224** ..... pg 0

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Title 64 and Title 65 ..... pg 6

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Statute of Frauds ..... pg 18

Amendments 5 and 14 of the U.S. Constitution Due Process ..... pg 18

42 U.S.C. § 1983. ..... pg 18

Background on case

Following the Summary Judgment of December 2010 granted in favor of the Plaintiffs, Appellant Sharon Lind has found evidence which shows conclusively that no road has existed here, and that the fee simple ownership of the area belongs to the property owner, not the City. In Lind's opinion documents presented into the court file make has made this issue as presented in Court moot, as the property in question was never within the City Limits of Kahlotus. The City did not establish a presence there under the laws as they exist under the Constitutions of either the State of Federal Government, or by the laws and statutes for the State of Washington. The Gillocks plat itself was never properly recorded, and as a contract subject to the **Statue of Frauds** failed in the transfer of this property to the City. The City failed in it's obligation to get the agreement properly recorded, and to make the proper correction within the time frame required, presently as **RCW 58.17.170**, it was not recorded in the original Book of Plats with the County, and as such in **Title 64...** was void. Documents placed into the County record in the following decades to fix the pieces were done outside of this timeframe. **CP 76 to 81.**

Regardless of this, the City has established through historic use some right of ways within the original Gillocks plat. The road that is now called Courtright Street appears to have been the unnamed alley in the original plat. The original Courtright Street ran just south of the quarter section line, as can be seen in the Gillocks plat map, and the Petition for Incorporation **CP 115, 194,196, 203, 207, 209.** In the 1950's the City "shrugged", and shifted lots and streets around to accommodate a new football field for the school. Streets running through the new field were closed, and others were established along the periphery. This appears to be what happened to the original Courtright Street, as the street as it exist now clearly does not fit with the original Gillocks plat **CP 30, 31and 115, and Appendix iv,v**. The City failed to get these actions recorded with the County until a few years ago, and for tax purposes the Assessors Office seems to have shifted the whole plat south at some point to accommodate the new location of Courtright.Street. This has resulted in lots being laid on the vertical side of the cliff face just south of town.

In August of 2000 the defendant purchased the parcel of property on which the house is located. This originally consisted of a series of combined lots and straddled the City Limits of Kahlotus. At the

time of purchase there was no "road" going through this area, but instead it consisted of a dirt trail covered in tall weeds. It could be seen that there had been vehicles driven through here previously, but at that time of purchase the western side of this trail, that borders the Hagans property, was blocked by a couple of small concrete culverts and weeds. There was no evidence that the City had every used or maintained this trail as a street, or had done any actions to establish a street. The Appellant purchased the property/parcel confident that this was part of the purchase. It was in fact the parking area for the house. The Appellant was a frequent visitor to this property during the two months it took the property to close, and in all that time saw no evidence that there were vehicles driven through there. After the Appellant had taken possession of the house she was approached by the neighbor (Respondent Hagans), who asked her permission to leave the area next to the house open "for emergency vehicles". This property is at the edge of town, and borders patureland, and as this had been a particularly hot and dry summer with numerous brush fires in and around town, this seemed a reasonable request, and similar actions were done for the rest of the property as well. Permission was not given,

however, to establish a road and allow the neighbors in and out privileges. The Appellant had in fact made plans to block this area from the start with a rock fountain.

In the time period between 2005 and 2007, following increased activities in the area by the Respondents, The City of Kahlotus et al., the Appellant approached the then current Mayor of Kahlotus Donna Fone about her concerns with her property. The Mayor requested that Lind wait before starting any actions because the County was doing an extensive survey of the County, and it would be a little while before they got to Kahlotus. The survey crews did come through town in 2007 and 2008. In the summer of 2008 the Appellant was told by a Kahlotus City Council member that there was going to be a public meeting where the City Council would discuss which streets to keep open, and which to close. The Appellant Lind attended this meeting, and told the City Council that this was not a street. This was further supported that summer when the acting City Planner Mike Corcoran from BFCG presented to the City Council the most recent and updated map, clearly showing that the City Limits for Kahlotus ran right through Lind's house, and did not extend further south than this. Following the meeting, and in the presence of the entire City Council, the Mayor

Donald Watt told Lind that if she could find any evidence that the City closed this road, or like action, he would accept it. He grew up in that town, and he knew that there was never a road there. There was no disagreement from any of the City Council members, many of whom had also grown up in that town. As stated, during that same summer the acting City Planner presented an overview map of the City of Kahlotus to the City Council. On that map it clearly showed the official City Limits running through the middle of the house, and not encompassing the area now referred to as "Gillocks Street" at all. Later in the summer of 2008 the City Planner had the City Council vote on an Ordinance modifying the original 1907 legal description of Kahlotus, as can be found on the Petition for Incorporation which was presented to the County Commissioners in 1907. This was pending the election results in the fall 1907elections and I have yet to find evidence that they occurred. This Ordinance, done without any firm documentation, and with the support of the County, slipped the City Limits south approximately 120 feet.

The Appellant spent the next months doing a thorough research of the City and County records, and made several records request to the local and county governments. What was discovered is that

there were very few actions done by the City that were recorded with the County, or properly documented. While doing this research in the Winter of 2009 the Appellant made a Request to Vacate to the City Council of Kahlotus. This was not an admission that there was a "street" here, but what seemed the most expedient way to get an action recorded by the City and the County. There was now a new mayor, a close friend of the Hagans family Richard Halverson, and he laughed while he read the petition. At the following City Council meeting he had determined on his own and without presenting it to the City Council for discussion, that he would not honor the petition.

After the petition to vacate was presented, the Appellant did find in the Minutes of the City of Kahlotus from 1967 actions taken by the City which directly related to this property, and which they had been requested to find. They concerned the closure of Pine Street, and the unnamed alley, as described in Gillocks Addition to the Town of Hardersburg. While recorded as a closure, the actions were clearly those of a vacation, and the intent was such. The City has used closed and vacation interchangeably, and whatever word is used is dependant on the educational level of the person typing the document. As with most other actions done by the City of Kahlotus,

this was not recorded with the County. The Appellant presented this information to the next City Council meeting, and was met with anger and disbelief by the mayor Halverson and the Hagans family. One of Richard Halversons statements was "It's been a City Street long enough, we are not going to switch it back!"

I also presented this information to a property attorney, who upon examining this and the unencumbered Deed and Title to the property said that this should be enough to present before a Judge. A letter by the attorney was written to the City nicely requesting that they honor what was found, but it was ignored. The Appellant Lind, knowing that leaving this area open to traffic left her open to an adverse possession claim, put barriers back where they had existed when the property was purchased in 2000. Richard Halverson, on his own authority as mayor, and at the request of the Hagans family, had the Appellant criminally charged in the spring of 2009, and again in the spring of 2010. In District Court the Prosecution, twice, based on the public records could not prove that the City owned this property, and the cases were dismissed without prejudice. The Appellant had meanwhile obtained a different property attorney, who's advice was to file an action for Quiet Title. In the summer of 2009 it was learned that the

Mayor Halverson was prepared to file a civil lawsuit against the Appellant, again based on their own authority as mayor and without bringing this to the City Council. And pending the fall election for Mayor in which Lind was also running. Following the election this issue was formally presented to the City Council for the first time. The vote was to turn the issue over to the City Attorney to see who actually owned the property, and there was no mention of a pending lawsuit. In January 2010 the lawsuit was served on the Appellant. Before the end of the year the Summary Judgments was called by the Respondents/ Plaintiffs, with the initial Order signed on December 15, 2010, and again on May 9, 2011. These were in favor of the Plaintiffs, and based on the same information that had been previously presented in criminal Court. The Appellant, upon the discovery of new information wholly in their favor, and not made available at the time of the Summary Judgment, presented this new information into the Court file, and on October 10, 2011 presented these new documents in Court through an unnamed Motion, and no action was taken. A Motion to Vacate, following CR60 rules, was filed in November 2011. This Motion was denied on December 12, 2011, with the Order being signed on January 3, 2012. This action was appealed by Lind,

which was dismissed in October 2012 due to a timing issue. While this appeal was in the Appellant Court Lind did find a map, produced by BFCG for the City of Kahlotus, that put the pieces of the property puzzle together. This map showed the actual location of the quarter section line, from which the plats and the properties, and the City Limits, are derived. Other maps made available did not show any evidence of this lines location. The Appellant does have some education in map reading, so she promptly contacted BFCG with a public records request in the summer of 2012. She was presented with several pages of correspondences between BFCG ,and the City of Kahotus, the County, and the State. Following the discovery this and of more new information not made available at the Summary Judgment, or the prior Motion to Vacate CR60, the Appellant again made a request to have the case reviewed through a Motion to Vacate CR60 3b. Again this Motion was denied based on the timing issue, and Due Diligence. The denial of this Motion and the granting of CR11 sanctions to the Plaintiffs, and the subsequent Motions to Reconsider and as they relate back down through the layers to the original Summary Judgments are what the Appellant is now presenting to Court of Appeals for Review and Judgment.

Arguments

A. The Motion to Vacate following Civil Rule 60 provides an opportunity that can be used to address cases where other solutions may not be readily available. I would certainly include this Case within this category. I have twice presented a Motion to Vacate to the Lower Court with the hope that the information that has been presented by me to Court will be reviewed in it's entirety from the Court file, as is one of the requirements of a CR 60 Motion to Vacate. Decisions in my understanding are not made solely on the recent documents and pleadings, but on the whole case with what is provide in the Court file.

B. The most recent The Motion to Vacate filed in December 2012 was denied primarily on the timing issue as per CR 60, and the requirement that the there be shown "Due Diligence" in researching the case before the Motion is made. The timing of a CR 60 Motion is within one year of the most recent action in the case of CR60(b)(2) New information. The Motion was filed in the Lower Court in December 2012, and the primary Order I was requesting to vacate, as well as the original Summary Judgments, was the January 3, 2012 with the signing of the

Order Denying the previous Motion to Vacate. Clearly this was within the one year requirement, and should not be considered outside of the one year timeframe.

C. The Case was also denied that while I did produce new information, there is no reason to believe that it could not have been found through "Due Diligence" prior to the Summary Judgment. The term due diligence is also a vague term with no set standard to describe it, but does imply that some care be taken before things are initiated and there no set standard to let anyone know when they have me or exceeded this requirement. Due Diligence is primarily a contract term for people who initiate, or respond to, the request for a contract. It should not be used the same way when someone is defending themselves from other people's actions.

The *Merriam-Webster definition of "due diligence" is 1 : the care that a reasonable person exercises to avoid harm to other persons or their property 2 : research and analysis of a company or organization done in preparation for a business transaction* .

Clearly neither one of these applies to a Defendant's need to find all of this information prior to an action initiated by someone

else. In Court the Defendace did fulfill this requirement by presenting the clean and unencumbered Statutory Warrantee Deed, Title, and Tax Records, the primary documents that support property ownership. And they presented an action by the Plaintiff's to show that in the past they had no interest in the area now in question. Due Diligence was, however, the responsibility of the Plaintiffs/Respondents before they initiated the lawsuit. Not only does it appear that the Plaintiffs failed in this respect, it was not up to the Defendant to discovery evidence and information that should have been presented in Court by the Plaintiffs at the time the Judgments were made. Evidence which obviously may have been in their favor in Court.

D. This leads to some of the other parts of a CR 60 Motion to Vacate. While the most recent Motion was based primarily, but not exclusively, on new information, I also have in the Court documents references to 3(b)(3) Fraud and Misrepresentation. I would also like to include 3(b) 4, and 3(b) 11, as it has been clearly shown that that the circumstances of the case warrant a review due to other circumstances, and that has been my main point and intent all through the Court proceedings. Mainly that

this issue should never have been brought to Court by the Plaintiff's in this manner, as the area is in my opinion and based on my research, is outside of the City Limits of Kahlotus. No legal actions were initiated to properly bring this area within the City Limits. Due process as required by both the **Constitution of the State of Washington** and the Federal Constitution under **Amendments 5 and 14** has not been followed at all, and no annexation took place. There has been no written contract in the conveyance of this property, as required by the **Stature of Frauds.** The City has no legal right to their actions in this area. As submitted to the Court in one of the original 2010 memorandums for the Summary Judgment, the City's action to deprive Defendant Lind of her property is subject to claims under **42 U.S.C. § 1983**. **CP 382.**

E. The granting of the CR 11 Sanctions to the Plaintiff was inappropriate. The Defendant did present new information to the Court within the one year requirement, and did show the due diligence required in presenting the evidence prior to the hearing. The Motions to Vacate should not have been denied. And it has been remarked by the Lower Court during previous

attempts by the Respondents to collect attorney fees that this case is not frivolous.

F. The new information that I presented in Court regarding the correspondences between the City of Kahlotus, and BFCG, the County, and the State, as well as the related documents and surveys, **CP 88 to 92** further support my claim that of CR 60 (b) (3) that the Plaintiff's et al. wished to misrepresented the evidence that they produced in Court. This was a willing omission. Most of this information was done "in house", and not available in the public record. The City officials, particularly the City Clerk Sharon McCaleb, and the mayor Richard Halverson knew that I was looking for this information. I spent a great deal of time in City Hall doing the research, and made numerous public records request for just this information, so it should have been made available to me, or presented in the discoveries, prior to the Summary Judgment.

G. What has become clear as this case has developed is that the original title of this property as determined by the **1892 Land Patent CP 82**, of which Appellant Lind is a direct assignee. (see Appendix i where some of this has been pulled out.) Property as per a land patent is conveyed through contracts. This parcel was

created by an earlier assignee **CP 83**, and passed down in it's entirety to the Appellant Lind. Any attempt to insert a road through here is relying on the false information passed on by "the color of title", mainly to facilitate tax collection **CP 228, 229, 230**, and does not represent proper transfer of property.

H. The previous property owner, responding to actions by the Hagans family, did file a Homestead Declaration specifically for this property **CP 84 82**, essentially bringing the protection of the land patent forward to the present.

I. While it has been presented in Court that this is not a final plat **CP 183 to 235**, the plat itself, recorded or not, originates from the intersection of the Quarter Section line, as determined by the Government Survey. This is backed up by the plat's description **CP 196 197**, and the documents for Incorporation **CP 194 207 209** submitted to the Franklin County Commissioners in 1907. Any intelligent school child with a ruler can see that the plat doesn't extend through the area the Plaintiff's want to call Gillocks Street. The foot as a property measurements was the same in 1905 as it is today.

J. Going back to earlier arguments that I presented in Court in 2011, and for the initial CR 60 Motion, what we are dealing with

here is a plat created in 1905. In 1996 the Attorney Generals Office of the State of Washington issued an AGO directly relating to platting. AGO 1996 No. 5 Platting and Subdivisions – Counties – Cities and Towns – Effect of 1969 Platting Act on land platted before enactment. **CP 217 to 223**. In 1937 the State of Washington issued new requirements for land platting, the 1937 platting and subdivision act (chapter 58.16 RCW) . Plats would now have to take into consideration land use, as well as property transfer. This was later repealed with the current law RCW 58.17 in 1969. This was readdressed and reexamined in the AGLO of 1974 No 7, and AGO 1996 No. 5. While the intent was to allow local governments the opportunity to reassess and revamp undeveloped plats and bring them to current standards prior to sale and development, it was also clear that in cases where the land was developed, and had changed hands several times more care needed to be taken. The City never seriously addressed this issue or complied with the either the 1937 Act or the1969 Act for platting. If they had the issues that I am now facing as a property owner would have been addressed a long time ago. It was inappropriate of both the County and the City to take the unmodified 1905 plat, and without addressing this

issue, slap the plat down 120 feet further south to facilitate property transfer. If the City had followed through with this requirement these actions probably would not have occurred.

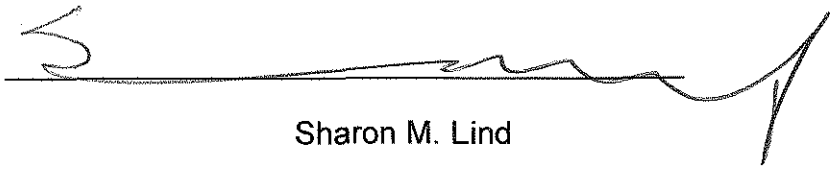
Conclusion

The Appellant Sharon Lind's CR 60 request for the Motions to Vacate/Amend the Judgments as they relate to this case should not have been denied on what can be described as courtroom technicalities for a difficult case. I had presented enough information and hard evidence to call into question the Plaintiff's position long before the first CR 60 hearing in December 2011. It is unfortunate that property issues can be overly complicated and difficult to work through the layers and straighten the issues out, but the laws as written are concise and to the point.

What has happened here is a gross miscarriage of judgment, originating from the Respondents own failure to follow through with what was their own requirement of "Due Diligence" prior to the initiation of the lawsuit. And their failure to follow existing laws as they come to property transfer. Had they done so, this case would not have been presented to Court as it has been. Defendant Lind

was deprived of her property unlawfully, and is subject to claims under 42 U.S.C. § 1983. **CP 382.** The Court of Appeals should review Sharon Lind's Appeal, and if it's judgment warrants it, reverse the Lower Courts Denials of the Motions to Vacate/Amend Judgments.

Dated this 19th Day June, 2013



Sharon M. Lind

Appellant pro se

Appendix

i. Statement of facts and observations

1. The Statutory Warrantee Deed, the Title to the property, and the County tax record show that the Appellants property

consist of one parcel consisting of original lots, unencumbered by any easements or right of ways. There is one parcel number. CP 365. If there had been a road bisecting the property, I would have two parcels, and two parcel numbers.

2. The Warrantee Deed, Title, and tax records are documents that by common knowledge and usage are the primary documents which any property owner needs to produce to show ownership of a property. They are not often required to produce more than this when required to show fee simple ownership of property. That the legal description also includes the word "inclusive" implies that there is unbroken continuity from one corner of the parcel to another. This can also include the natural and historic boundaries of the property.
3. This property has been one parcel at least as far back as 1963, as established by Statutory Warrantee Deed and chain of title. CP 235 231 227 It is described by those records available in the County, and relying on the Treasurers Sale of the property 18 years previously. The intent was to establish this property as a parcel, not to be

broken up into individual lots. Recent changes in the County for property requirements to establish septic systems preceded/required this. What has become apparent is that the County sold to the Harters property which was already part of the original 80 acre parcel as guaranteed by the land patent to the heirs and assigns.

4. What has been presented in Court is evidence that this area is outside of the Kahlotus City Limits, as established by description of the plat, and the Petition to Incorporate. **CP 115, 194,196, 203, 207, 209.** By extrapolation and basic math which any school child with a ruler could figure out, the property in question the City and the Hagans have designated as "Gillocks Street" is outside of the City Limits, as defined by both the plat description and the Petition for Incorporation as being 230 and 250 feet south of the Quarter Section line of the Section. **CP 115, 194,196, 203, 207, 209** The Appellants property, the parcel, owing to the "color of title" may not actually consist of lots 6 to 13, but instead be comprised of lots 6 to 9, and Tract 8. Tract 8 has always been outside of the City Limits, directly attached to and described by the location of lot 9. **CP 115, 194,196, 203, 207, 209**

There has never been an established road running between lots 6 to 9 and Tract 8. **CP 115, 194,196, 203, 207, 209**

5. From what has been determined based on the Gillocks plat and description, **CP 115, 194,196, 203, 207, 209**, the unnamed alley shown on the Gillocks Plat, and from which the Respondents want to refer to as "Gillocks Street" is located between lots 6 to 9, and 10 to 13 of Gillocks Addition to Hardersburg, block 2. This is now referred to as Courtright Street, and is now an established city street. The original Courtright Street would have run just south of the quarter section line, and was the border between the original Hardersburg plat, and the Gillocks plat, as determined in the 1905 plat **CP 115, 194,196, 203, 207, 209**. That the City has an established history of closing and renaming it's streets without properly documenting and recording the changes has been established, **CP 178 179 180 332 to 335** and can be seen in the lack of records in the City and the County, and acknowledge of this in the discoveries submitted prior to the Summary Judgment. **CP 332 to 335.**
6. The location of the Section Lines and their divisions would have been well established and known in 1902 and 1905.

In 1905 errors in the original Hardersburg plat were brought to the Counties attention. **CP 200** 10 years prior to this in 1892 the northeast corner of Franklin County was separated from it's original Whitman County, as can be found in the history of Franklin County. This would have been based on the Government Survey of the Section Lines. By this time the railroads had already been well established for many years. Any discrepancies in the original survey work done by Isaac Stevens in the 1850's would have been corrected.

7. The original Federal Land Patent by Peter CP 82 for the original 80 acre parcel was filed in 1892 and recorded with the County in 1919. As by convention with land patents, the date of 1892 is when the establishment of the parcel is "put on notice" to the public. Peter sold this parcel to Neace in 1892, and Neace sold this 80 acre parcel in it's entirety to the Gillocks in 1904, as established by Government Survey. The plat Gillocks Addition to Hardersburg was initiated in 1905. It does not appear to have been finished. **CP 211 212 76 78 79 80 81.**

8. Land Patent requires that any land transfers must be done by written agreement and done as a contract. CP 82 **The**

Statute of Frauds in real estate transfer also requires as much, but does accept that this can be done by a written "quick claim deed". **Title 64 and Title 65**

9. The written part of a plat dedication has been accepted in Court as fulfilling the obligation of a quick claim deed. One of the Appellants main argument in Court, and for which they have presented a great deal of documentation is the argument that a final plat was never established, based on the laws from today and 1905 That they City failed to fulfill the requirements of the contract necessary for conveyance of property. Title 64
10. Even if the Lower Court rejected my assertion that this plat was not made a final plat, then it must except that based on the dedication a contract was made, as per the Statute of Frauds, and requirement of a land patent.
11. This contract firmly establishes the boundary between the original Hardersburg plat and Gillocks plat was the quarter section line. The east west right of ways that were established ran along the quarter section line, and 130 feet further south. There was no road dedication 240 or 250 south of the quarter section line. **CP 115, 194,196, 203, 207, 209**

12. The petition for incorporation of 1907 also establishes the division of the Hardersburg and Gillocks plat as the quarter section line. Pending the 1907 election in the fall.
13. Confusion arose following the 1907 500 year flood when much of the areas population moved out. Financial situations were at a low owing to the financial panic of 1907. There was a rash of homestead jumping in northern Franklin County at the time, as documented in the history of Franklin County. People took advantage of the confusion and sold some of the lots back and forth amongst each other. The area was eventually abandoned, and in 1913 the County foreclosed on many of these lots for taxes owed in 1907. CP 211 Many of those whose properties were foreclosed on where members of the Hardersburg Townsite and Improvement Company, and these were taxes that would presumably of had to have been paid for the 1907 Incorporation.
14. In the 1920s a young local resident Theodore Harter started picking up the vacant lots, primarily at tax auctions from the County, but he did purchase the majority of the original 80

acre parcel from Orillia Gillock, including Tract 8 and Tract 9. **CP 227**

15. In 1930 Theodore Harter sold the majority of the original 80 acre parcel, as per the original land patent, to his sister Viola Harter. This included everything except for that platted as Gillocks Addition. **CP 227 228 229** Many of the lots in Gillocks Addition had been purchased piece meal in the ensuing years, but she purchased Block 3, and half of Block 2 of Gillocks Addition at Treasurers Auctions in 1943 and 1945, respectively, bringing the property back into the original 80 acre parcel. **CP 227 228 229** Viola Harter had already been paying taxes on Tract 8 since the 1930s. **CP 229**
16. In the late 50s and early 60s, following the reshuffling of town for the new football field, and the establishment of the new State Highway Viola Harter broke up some of this property and sold off the sections as parcels. **CP 228 235** The deeds themselves took on the best fit for the descriptions that could be found with the County tax records. The parcel that was created in 1963, and the parcel which I bought in 2000, are the same parcel. **CP 235** It has long been recognized as a basic truth, in the Courts and otherwise, that

the property that one owns may not match the legal description, and that people often pay the taxes on the property that they don't own. Most property transactions are the best fit that can be established, and certainly why there is so much confusion in court on property issues.

17. That this area has been frequently surveyed is without question. see court papers **CP 457 442 443 444 313 230 228 201 200 194 118...** The fact that there hasn't been anybody to get the properties to match what is on paper is also beyond question. **CP 457 442 443 444 313 230 228 201 200 194 118...**What is surprising is that it took until 2007 for one of these surveys to again reestablish the location of the quarter section line, and relying instead on the documents available in the County, such as the Assessors Map of 1971. **CP 30 and appendix.** The discovery that the quarter section line was not where it was assumed to be prompted the revised Ordinance of 2008 **CP266** to shift the City Limits, based on correspondences between City and County employees, and was contrary to the recommendation of the Surveyor. John Rogers who suggested closing streets that aren't in use to avoid future issures. **CP 88 89 90 91 92**

18. None of the correspondences between the City and the County, **CP 88 89 90 91 92** or the Survey, were presented to the Appellant Sharon Lind or the defenses attorney John Ziobro prior to the Summary Judgment, either in the Discoveries, or following numerous public records request by Lind. In the next year Lind found a great deal of evidence in favor or the defense which the Plaintiffs had failed to provide, but it was following the location in April 2012 **CP 114** of a map produced by BFCG, and trying to put the parcel puzzle pieces together that the basice truth was discovered about the location of the quarter section line, prompting a public records request by the Appellant to BFCG, for which they provided several pages and maps. **CP 88 89 90 91 92** This was the new information presented in Court for the most recent CR 60, and was certainly over and above what the defense should have had the responsibility to find through "Due Diligence", but instead was the responsibility of the Plaintiffs to provide through their own requirement for "due diligence", and particularly since this was "in house " information that was not made available to the public prior to

the Summary Judgment, and for which they initiated several actions, including the lawsuit against Lind.

19. What has become apparent to Appellant Lind is that the position of the Defense going into the Summary Judgment, that she is the fee simple owner of the entire parcel, has been supported. And then some. She has discovered that she is a direct assignee of the original land patent of 1892, with an unbroken chain of title. Any discrepancies that the Plaintiffs/Respondents the Hagans and the City of Kahlotus wish to take advantage of are merely the "Color of Title" from the City and the Counties inadequacy in their record keeping. They do not represent true title to the property.

ii

Additional Statement of major issues throughout the case

1. Appellant Lind had fee simple ownership of a parcel of property located in Kahlotus, Washington. This parcel straddles the City Limits for the City of Kahlotus.
2. In March of 2009, in response to the City's plans to bury a water line in the property for the first time, Lind blocked a central portion of her property to traffic. This was following

consultation with a property attorney, and the discovery of actions by the City from 1967 and showing no interest in the area. These were found in the City's own records, and as requested by the City Administration six months prior to this.

3. Initially the blocking was done with traffic cones, but on April 30, 2009 Lind ordered the placement of large rocks across this section of her property, in addition to the traffic cones.
4. At the request of the Respondent Hagans, the newly appointed mayor of Kahlotus and a close friend of the Hagans, Richard Halverson, filed criminal charges against Lind. This went to District Court in May and June of 2009, but was dismissed because the Prosecution could find no evidence based on the public records that the City owned the property.
5. This was not a surprise to Lind, because she had the opportunity to present this issue in detail with an individual who had experience with their own property issues. It was while presenting this information that Lind came to realize that a City of Kahlotus Ordinance from 1994 that she had discovered in her research did not create a road, but merely named a road that did not exist.

6. The house had been constructed three years prior to this, and with the granting of Permits by the City. These permits specifically state that they are based on the adherence of the City Ordinances. The only issues were that the initial permit was for a shop, but the builder showed the intent to live in the building, so they were asked to reapply for a new permit for a home, which was granted. No road existed at the time. Any road would have violated set back requirements for a structure, and a permit could not be granted.
7. In August of 2009, in response to actions by the Respondent Hagans, Lind again blocked this area with traffic cones.
8. In Janurary of 2010 Lind was served with the lawsuit. The road remained blocked until a temporary injunction was ordered in August 2010.
9. In April 2010 Lind was again charged in criminal court for blocking this area. Again it was dismissed because the Prosecution could not prove based on the public records that the City owned it, or that it was a public throughway.
10. In October of 2010 the Plaintiffs called for the Summary Judgment. The hearings were held over three sessions, due to inclement weather and a malfunctioning digitizer. No

recording, other than notes taken by court staff, were made of the proceedings.

11. The Defense, recognizing that this issue was complicated, presented as their main arguments those documents which should give undisputed property rights, namely the Statutory Warrantee Deed, The Title, and the County Tax records. They all support that the Defendant had fee simple ownership of the entire parcel, unbroken and unencumbered by roads or easements. In addition to this the Defense presented an action by the City showing that they had no interest in the area. This action by the City was done in the same manner that most of it's other actions have been and continue to be done, and for which the City of Kahlotus has an established a precedence. This was the 1967 closure of the area in question, whose actions and intentions were clearly meant to be a vacation. In true Kahlotus fashion someone complained about the City's action some months later. And then things remained quiet with no activity for twenty years. The property owner did block this area, and had put fences up. It is only surmised, and in my opinion, that, because the City Council at that time was comprised of

intelligent and educated people they may have discovered when they presented this action to the County the truth that this area was outside of the City Limits. No further action was required.

12. The Attorney for the Defense also stated in Court the fact that there were no City Services buried in the area in question. This was met with laughter by the Plaintiffs.
13. With the exception of the pleadings and the affidavits the Plaintiffs did not produce any new information in Court then what was available in the public record, and for which the Prosecution had been unable to make a determination in the criminal hearings. They attacked the Defenses use of the City Ordinances, including one for another addition, which appeared to use vacation and closure interchangeably, and insisted on following the letter of the law when it came to a street vacation. The City can close anything they want, but the word vacation needs to be used for a vacation. The Plaintiff's produced an original petition from the School District for a vacation, and the deeds showing that the street in question was vacated. It must be noted that this

documentation was not found in the City records, and the City Ordinance did not say vacation. It said closed.

14. The Plaintiffs also presented a placard of the 1905 Gillocks Plat, and a 1994 survey done by Respondents Hagans. Both documents clearly show that the Gillocks Plat originates at the quarter section line intersection.

15. What the Plaintiffs knowingly failed to provide was the recent results of the County sponsored survey on the actual location of the quarter section line. It wasn't until after the Summary Judgment was in progress that this became available to the public. The Plaintiffs also failed to provide the information shown on a City document, posted right on the wall of City Hall, and done by Selector's Inc., which clearly showed the public right of ways in the City of Kahlotus. This information and the results of the Survey were not shared with the Defense, even in the Discoveries, or through numerous public records request. The Plaintiffs, in Lind's opinion and based on their previous comments and actions, went into Court with the intent to mislead the Court in granting judgment in their favor.

16. Summary Judgment of December 2010 was granted in favor of the Plaintiffs, with the acknowledgment that while this was not in the best interest of the Defendant, there was the 1905, and the 1994 survey, and actions following the 1967 closure implying that no City action had been completed. "There was no Vacation".
17. Summary Judgment actions of May 9, 2011 were a formality done to complete those of December 2010, and to establish the injunction preventing me from blocking the area inches from my house.
18. Directly following the Summary Judgment of 2010 Appellant Lind began to find irrefutable proof and information to back up and support the excellent work done by Attorney Ziobro, and to support that there was no road bisecting their property. Some of this was sent to the Court by the Defendant in an ex parte letter in April 2011 **CP 227**, and some of this was presented by the Defendant into the Court file in July of 2011 **CP 236**. This information was gathered and presented in Court at a hearing through an unnamed Motion on October 10, 2011. As such the Court could not take any action on it.

19. A Motion to Vacate was presented to the Court in November of 2011. This was denied based on timing and due diligence, and the Order was signed on January 3, 2012. The decision was appealed, but the Respondents/Plaintiffs got it dismissed, again on a timing issue.
20. In July of 2012 the Appellant discovered new information supporting their claim in the case through a public record request to BFCG Benton Franklin Council of Governements.
21. Following the release of this case by the Supreme Court and the Court of Appeals, the Appellant again filed a Motion to Vacate/Amend, as per CR 60. This case was again denied primarily on the timing issue, and due diligence. In addition, the Plaintiffs were granted attorney fees through CR 11 sanctions.

iii Selector's Inc. research on 1971 Assessors Map

iv Selector's Inc. research, as posted in City Hall

COOP

MARY

WASHINGTON

Michael Schaub

Michael Schaub

Michael Schaub

LARRY VAN HOUTEBERG 10

Antonio Harris Jr.

Ronnie Smith 10 etux

Lo Blk. 1 11

School District 20 Lo 11

Town of Kahlotus 20 Alg. Blk. 3 11

2

3

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25' " " " " " " 25'

Electors (a) Kirt Trish Silvia (P)

Electors (a) Kirt Trish Silvia (P)

25' " " " " " " " 25 1 10

80'

80'

80'

Courtright Street

R.S. # 720833

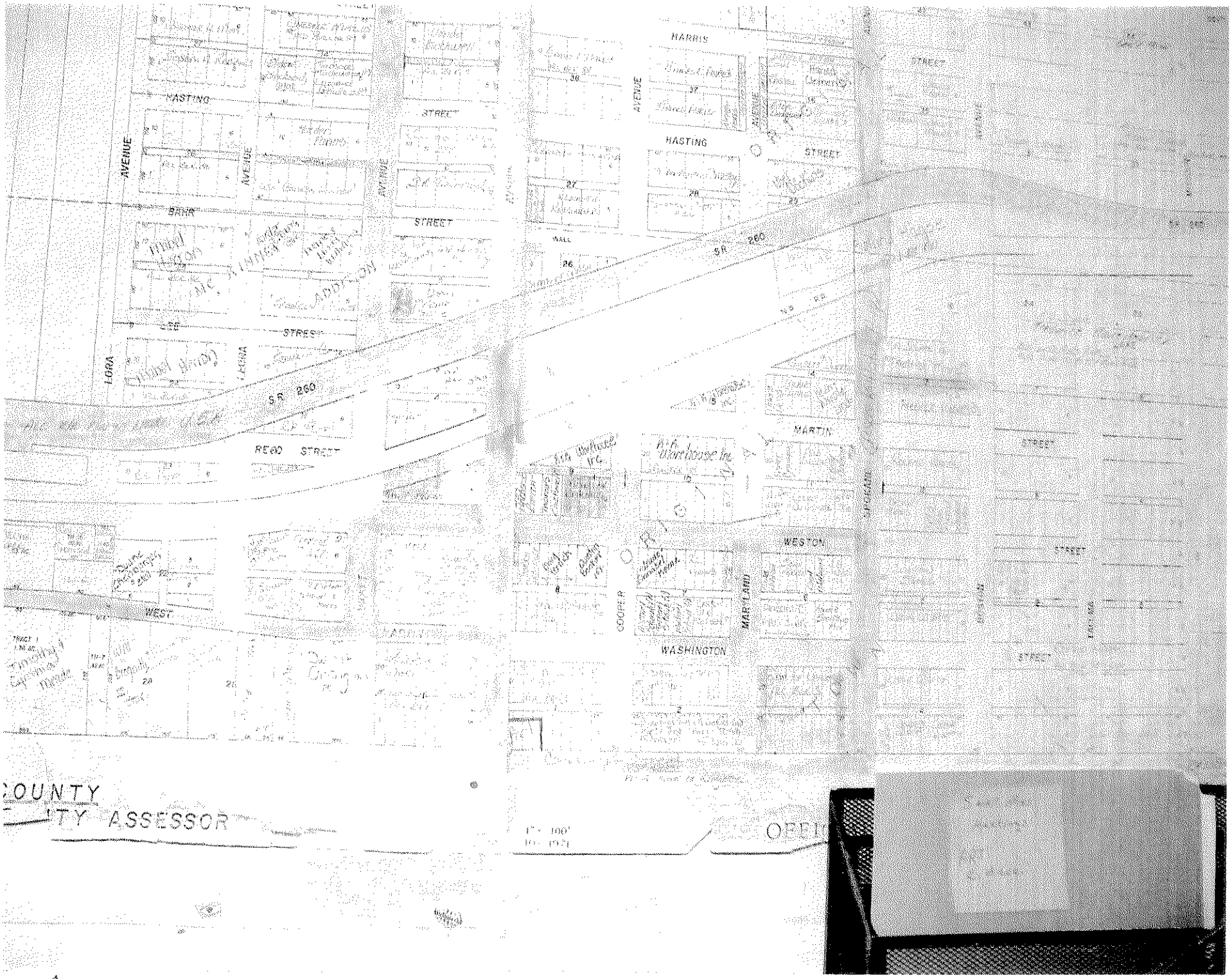
Blk. 2 - Town of Kahlotus

100'

1971

OFFI

Appendix iii


HARRIS
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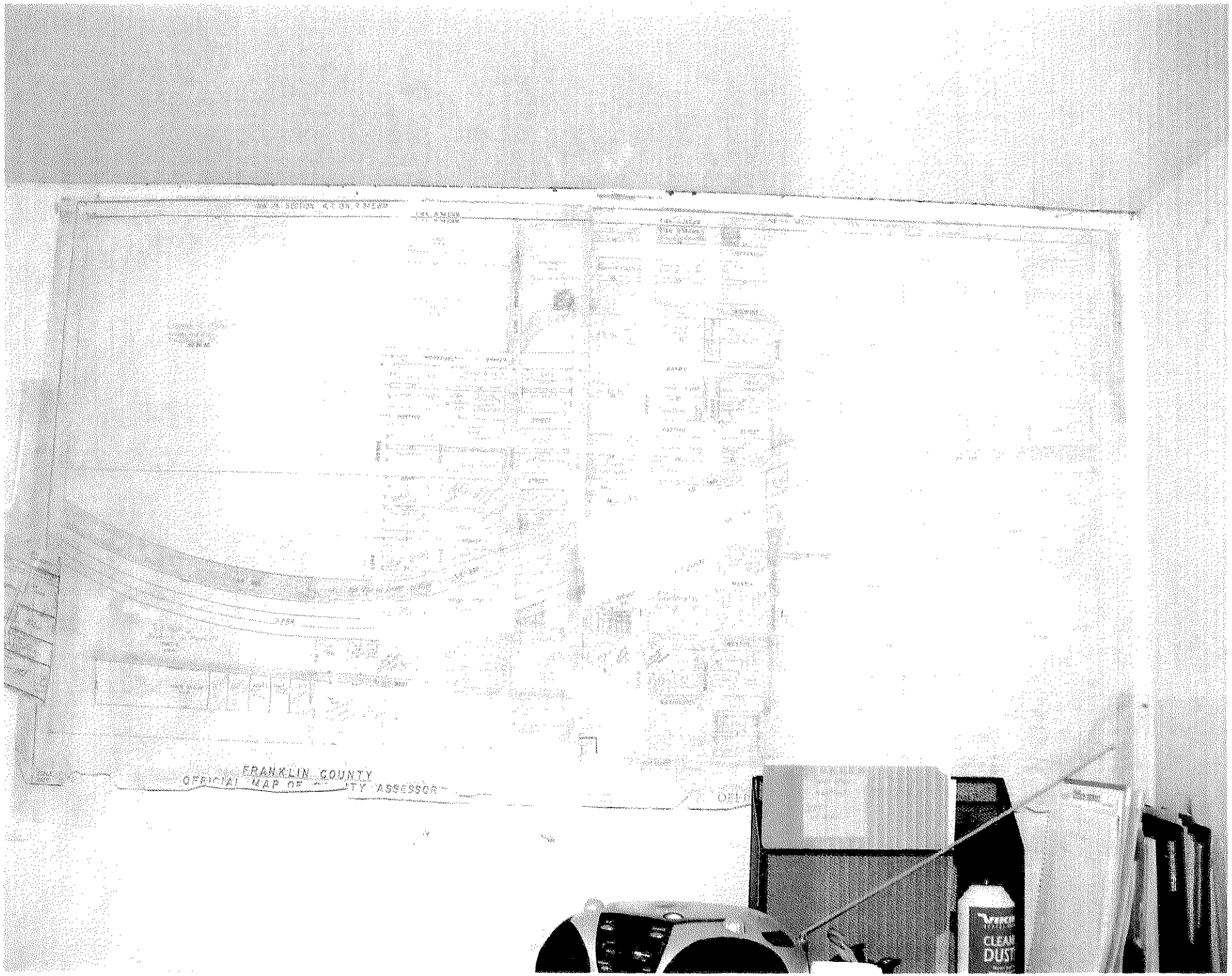
BAHR
SR 260
MARTIN
WESTON
WASHINGTON
COOPER
MARYLAND
LORA
REGO STREET
WEST
COUNTY
ASSESSOR

Appendix F6


FRANKLIN COUNTY
CLEAN
DUST