

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 SEP 10 AM 11:05

BY RONALD A. CARPENTER

NO. 84828-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WILLIAM H. KIELY and SALLY CHAPIN-KIELY, husband and wife,

Respondents,

v.

KENNETH W. GRAVES and KAREN R. GRAVES, Trustees of the
Graves Family Trust; and all other persons or parties unknown
claiming any right, title, estate, lien, or interest in the real estate
described in the complaint herein,

Petitioners.

**ANSWER TO STATEMENT OF GROUNDS FOR DIRECT
REVIEW**

WIGGINS & MASTERS, P.L.L.C.
Kenneth W. Masters, WSBA 22278
Shelby Frost Lemmel, WSBA 33099
241 Madison Ave. North
Bainbridge Island, WA 98110
(206) 780-5033

Attorney for Respondents

FILED AS
ATTACHMENT TO FMA

ORIGINAL

TABLE OF CONTENTS

INTRODUCTION 1

FACTS AND DECISION BELOW 2

REASONS THIS COURT SHOULD DENY DIRECT
REVIEW 5

A. The Graves mischaracterize the relevant issue: this
matter involved adverse possession of a fee simple
held by a private party, not a municipality's
easement. 6

B. There is no conflict with this Court's decisions. 7

C. This matter does not present a fundamental and
urgent issue of public import. 11

CONCLUSION 12

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Burmeister v. Howard</i> , 1 Wash. Terr. 207 (1867)	6
<i>Commercial Waterway Dist. No. 1 of King Cy. v. Permanente Cement Co.</i> , 61 Wn.2d 509, 379 P.2d 178 (1963)	8
<i>Erickson Bushling, Inc. v. Manke Lumber Co.</i> , 77 Wn. App. 495, 499, 891 P.2d 750 (1995)	passim
<i>Finch v. Mathews</i> , 74 Wn.2d 161, 443 P.2d 833 (1968)	6
<i>Goedecke v. Viking Inv. Group</i> , 70 Wn.2d 504, 509, 424 P.2d 307 (1967)	7, 8, 10
<i>Gustaveson v. Dwyer</i> , 83 Wash. 303, 304-06, 145 P. 458 (1915)	5, 7, 8, 10
<i>Rowe v. James</i> , 71 Wash. 267, 128 P. 539 (1912)	6
RULES	
RAP 4.2(a)	1, 5, 11

INTRODUCTION

The Graves have asked this Court to accept direct review to determine whether a municipality's "fee interest" in a dedicated but unopened alley precludes adverse possession. Motion 1. That issue is not in this case. Rather, here an unused alley easement encumbered the Graves' real property, but that property was openly used by generations of their neighbors for non-alleyway purposes. The municipal easement was then vacated. The trial court found that the years of open and notorious use adversely possessed the underlying property, not the easement.

The issue here is thus whether adverse possession runs against privately owned property that is also subject to a municipal easement. As the trial court correctly found, the answer is yes, under *Erickson Bushling, Inc. v. Manke Lumber Co.*, 77 Wn. App. 495, 499, 891 P.2d 750 (1995). A trial court decision following controlling authority that does not conflict with any other precedents does not satisfy any ground for direct review.

Nor does this decision generally jeopardize other dedicated but unopened streets and alleyways. RAP 4.2(a)(4). No municipal easement was (or will be) affected by this decision. This Court should deny direct review.

FACTS AND DECISION BELOW

William Kiely and Sally Chapin-Kiely, plaintiffs below and respondent's herein, own real property in Port Townsend ("the City") abutting real property owned by the Graves Family Trust.¹ The Graves' parcel includes an alley abutting the Kielys' parcel, which was dedicated to the City on March 18, 1908, via the following plat language:

And we do hereby dedicate to the Public for its use forever as Public thoroughfares the streets and alleys as shown on this plat.

Ex 27. "[T]he alley was never opened or used by the public as an alley." CP 163 F/F 4 (attached).

As far back as any party or witness could remember, a hog-wire fence in the unopened alley marked the boundary line between the parties' properties. CP 163-64, F/F 7, 10. The Kielys and their predecessors in interest have historically used the property as their own up to the hog-wire fence. CP 164, F/F 10-13.

A cottage and shed on the Kielys' property encroach on the alley. CP 163-64, F/F 8, 9; Exs 1 & 2 (attached). The Kielys and prior owners used the alley next to the cottage and shed for

¹ Trustees Kenneth and Karen Graves were the defendants below and are the petitioners herein.

parking. CP 164, F/F 9. Daniel Blood owned the Kiely property from 1981 to 1987; he parked a trailer used for his business in the unopened alley and stored materials there. CP 164, F/F 10. Duncan Watters lived on the Kiely property from at least 1993 through 2000; he treated the unopened alley as his property, making "exclusive use of the disputed area for his impressive garden." CP 164, F/F 12. Watters used the hog-wire fence to support his fava beans and other plants. *Id.*, F/F 11. Customers of Watters' bakery (in the cottage) parked in the alley. *Id.*, F/F 12.

The above evidence establishes almost 20 years of continuous, open and notorious, hostile use of the disputed alley. Since purchasing the property in 2000, the Kielys have mowed and "weed wacked" the alley. CP 164, F/F 13. The Kielys maintained most of the former garden area up to the fence. *Id.*

At the Graves' request, the City formally vacated the unopened alley on February 17, 2009.² CP 163, F/F 5, 6. On June 9, 2009, the Kielys brought an action to quiet title up to the hog-wire fence. CP 1-3. The Kielys moved for summary judgment on their adverse possession claim. CP 6-9, 10-14, 108. The Graves cross-

² The Graves paid \$10,000 to vacate the alley. CP 51 (attached); Ex 28.

moved for summary judgment that the Kielys' adverse possession claim was barred, arguing that the Kielys' claim could not accrue until the City vacated the alley in 2009. CP 35-42, 108, 109.

The trial court ruled that the City had an easement (before it vacated the unopened alley) and that the easement – an equitable interest only – does not foreclose an adverse possession claim on the underlying fee.³ CP 110. The trial court relied on *Erickson*, in which the Court of Appeals (Division Two) held that a party may adversely possess the property underlying a municipal easement:

We hold that where, as here, the dedicated road in question is unopened, title to the disputed property is held by a private party, and neither access to the right of way nor any interest of the public is at issue, an action for adverse possession of the underlying fee may be maintained against the fee owner.

CP 110 (quoting 77 Wn. App. at 499). The trial court ruled as a matter of law that the Kielys could adversely possess the Graves' property underlying the City's (former) easement, and set a trial to determine whether the Kielys had satisfied the elements of adverse possession. CP 108-11.

³ Judge Wood ruled on summary judgment and Judge Verser, who tried the case, refused to disturb Judge Wood's ruling. CP 108-11, CP 165, CL 5.

REASONS THIS COURT SHOULD DENY DIRECT REVIEW

The Graves argue (1) that the trial court's decision conflicts with this Court's decisions that no one may adversely possess government property (RAP 4.2(a)(3)); and (2) that this Court should promptly decide the issue because there are many dedicated but unopened streets and alleys in Washington (RAP 4.2(a)(4)). Motion 1, 10-11. The Graves do not assert a conflict among the lower appellate courts, nor is there one. RAP 4.2(a)(3).

Review is not appropriate under RAP 4.2(a)(3). This decision does not conflict with this Court's holdings that adverse possession does not run against publically-owned property. *E.g. Gustaveson v. Dwyer*, 83 Wash. 303, 304-06, 145 P. 458 (1915). The City did not have title to the alley – it had an easement over the Graves' property, which it vacated before the Kielys brought suit. CP 110, 163, F/F 5. The Kielys have never claimed that they could adversely possess publically-owned property.

For the same reasons, review is not appropriate under RAP 4.2(a)(4). The trial court's decision simply does not implicate municipal easements over unopened streets and alleys because the City's easement was vacated. The Kielys adversely possessed the Graves, not the City. This Court should deny direct review.

A. The Graves mischaracterize the relevant issue: this matter involved adverse possession of a fee simple held by a private party, not a municipality's easement.

The issue before the trial court was whether adverse possession runs against real property owned by a private party and encumbered by a municipal easement. The City never owned the disputed real property – it owned an easement over the Graves' real property. The Kielys adversely possessed the Graves, not the City. Adverse possession of public property was not at issue.

Contrary to the Graves' claims, the City had no fee interest in the alley – it had an easement, an equitable interest. CP 110.

This is consistent with many of this Court's decisions, *e.g.*:

- ◆ When a plat dedicates land for a street or road, the municipality has an easement, not a fee simple ownership interest. *Burmeister v. Howard*, 1 Wash. Terr. 207 (1867); *Rowe v. James*, 71 Wash. 267, 128 P. 539 (1912); *Finch v. Mathews*, 74 Wn.2d 161, 443 P.2d 833 (1968).
- ◆ Rather, the adjacent property owners maintain the fee underlying the easement. *Finch*, 74 Wn.2d at 167-68.
- ◆ The property owners on each side of a street own to the center of the street, subject only to a public easement for right-of-way. *Rowe*, 71 Wn. at 270.

There is no basis for the Graves' claims to the contrary.

The Graves' complaint that the trial court did not determine whether the original alley dedication intended to convey an easement or a fee is irrelevant. Motion 7. The Graves agree that

"Washington courts have adhered to the principle that a street dedication in a plat ordinarily conveys only an easement to the municipality." Motion 8. There is no contrary authority.

The Graves also mischaracterize the issue in arguing that the Kielys could not adversely possess the City's "easement interest." Motion 5. The Kielys never asserted a right to adversely possess the City's easement – they asserted a right to adversely possess the Graves' real property underlying the easement. And the City vacated the alley before the Kielys filed suit, so the Kielys' adverse possession claim plainly did not affect the City's vacated easement. The Graves' issues are not in this case.

B. There is no conflict with this Court's decisions.

The Graves assert a conflict with inapposite cases that are not controlling. Motion 5 (citing *Goedecke v. Viking Inv. Group*, 70 Wn.2d 504, 509, 424 P.2d 307 (1967); and *Gustaveson*, 83 Wash. at 304-06). The Graves correctly state that a party may not adversely possess property owned by a municipality for public use. *Id.* But again – here the Graves, not the City, owned the disputed property. There is no conflict

The Graves argue that under *Goedecke*, the Kielys could not adversely possess the "property over which the . . . alley

passed.” Motion 5. But **Goedecke** does not address that question. Rather, **Goedecke** involved a breach of a purchase and sale agreement guaranteeing sewer access to the property. 70 Wn.2d at 507. Whether sewer access was available turned on whether the purchaser could use a road to access the property. *Id.* This Court reversed the trial court’s damages award for breach, holding that there was adequate evidence that the road was available. *Id.* at 512. The opinion states in passing that a property owner cannot adversely possess a right-of-way that a municipality owns. *Id.* at 509 (citing **Commercial Waterway Dist. No. 1 of King Cy. v. Permanente Cement Co.**, 61 Wn.2d 509, 379 P.2d 178 (1963)). But here, the City never owned the disputed right-of-way.

Similarly, **Gustaveson** also is distinguishable on the ground that the government owned the disputed property. 83 Wash. at 304-06. There, the adverse possession claim turned on whether the county held land it purchased at a tax sale in a governmental or proprietary capacity. *Id.* at 305-06. The Graves owned (and had always owned) the unopened alley – the City had only an easement. CP 110.

This matter is controlled by **Erickson**. There, a 60-foot wide easement for a county road was dedicated over abutting properties.

The road was never opened. 77 Wn. App. at 496. In the 1950's, Erickson's predecessor in interest built a barbed wire fence along what he believed to be the road's centerline. *Id.* In 1990, adjacent property owner Manke had a survey conducted, revealing that the fence encroached more than 30 feet into his property. *Id.* Manke subsequently logged the property to the survey line, crossing the fence line. *Id.*

Erickson moved to quiet title to the property and for timber trespass. *Id.* Manke moved *in limine* for an order barring Erickson from presenting testimony on adverse possession. *Id.* at 497. The trial court denied Manke's motion and entered judgment quieting title in Erickson. *Id.*

The appellate court affirmed, holding that Erickson could adversely possess Manke's land underlying the easement, where (1) the road was unopened; (2) Manke held title to the realty underlying the easement; and (3) access to the right-of-way and the public interest were not at issue. *Id.* at 499. The appellate court was careful to point out that Erickson's adverse possession claim did not affect the county's easement, which the county had never vacated. *Id.* at 498-99.

The trial court correctly ruled that under *Erickson*, the City's easement did not foreclose the Kielys' adverse possession claim as to the property underlying the easement. CP 110. The Graves attempt to distinguish *Erickson*, arguing that the "plat dedicated only [a road] easement" and that the county did not improve the road. Motion 6-7. But here too, the plat dedicated only an alley easement and the alley was unopened. CP 110, 163 F/F 4.

The Graves go on to argue that in *Erickson*, the court permitted adverse possession of the privately held real property underlying the municipal easement, where the party asserting adverse possession did not seek to "extinguish" or otherwise interfere with the municipality's easement. Motion 7. The same is true here. The Kielys never attempted to frustrate the City's easement – the City vacated the unopened alley before the Kielys brought suit.

The Graves do not ask this Court to reverse *Erickson* or assert a conflict with *Erickson*. There is no conflict with *Erickson*, with *Gustaveson* or *Geodecke*, or with any other precedent. This Court should deny direct review.

C. This matter does not present a fundamental and urgent issue of public import.

The Graves' argument that direct review is appropriate under RAP 4.2(a)(4) is premised on their inaccurate and unsupported assertion that the trial court's decision somehow implicates the City's former easement. Motion 9-10. The Graves assert that there are many dedicated but unopened street and alley easements statewide, and complain that the trial court's ruling "would result in the potential loss" of these unopened streets and alleys. Motion 10. Again, the trial court's decision had no effect whatsoever on the City's (now vacated) easement, nor on any other easements.

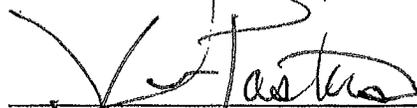
Erickson also does not create any of the problems the Graves imagine. There, the appellate court was very careful to note that the adverse possession of the underlying reality did not affect the municipal easement. 77 Wn. App. at 499. Neither that decision nor this one conflict with this Court's precedents. The issue of adverse possession against publically owned land is extremely well settled in Washington. This Case does not raise that, or any other issue meriting direct review.

CONCLUSION

For the reasons stated above, this Court should deny direct review.

RESPECTFULLY SUBMITTED this 10th day of September, 2010.

WIGGINS & MASTERS, P.L.L.C.



Kenneth W. Masters, WSBA 22278
Shelby Frost Lemmel, WSBA 33099
241 Madison Avenue North
Bainbridge Is, WA 98110
(206) 780-5033

CERTIFICATE OF SERVICE BY EMAIL AND U.S. MAIL

I certify that I caused to be emailed and mailed via U.S. mail, postage prepaid, a copy of the foregoing **ANSWER TO STATEMENT OF GROUNDS FOR DIRECT REVIEW**, on the 10th day of September, 2010 to the following counsel of record at the following addresses:

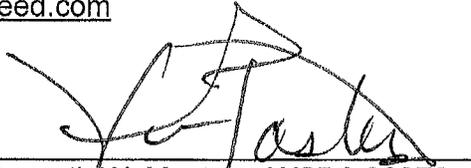
Counsel for Petitioners

Philip A. Talmadge
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188-4630
Email: phil@tal-fitzlaw.com

Frederick Mendoza
Maya Riley Mendoza-Exstrom
Mendoza Law Center, P.L.L.C.
P.O. Box 66890
Burien, WA 98166-0890
Email: fred@mendozalc.com
maya@mendozalc.com

Co-counsel for Respondents

Richard Lee Shaneyfelt
Attorney at Law
1101 Cherry Street
Port Townsend, WA 98368-4057
Email: rshaneyfelt@cablespeed.com


Kenneth W. Masters, WSBA 22278
Attorney for Respondents

RECEIVED
SUPERIOR COURT
STATE OF WASHINGTON
10 SEP 10 AM 11:45
BY RONALD J. CARPENTER
CLERK

FILED AS
ATTACHMENT TO EMAIL

ORIGINAL

FILED

10 JUL -2 PM 2:04

JEFFERSON COUNTY
RUTH BOGGS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM H. KIELY and SALLY CHAPIN-
KIELY, Husband and Wife,

Plaintiffs,

-vs-

KENNETH W. GRAVES and KAREN R.
GRAVES, Trustees of the Graves Family Trust
and any persons or parties unknown claiming any
right, title, estate, lien, or interest in the real estate
described in the complaint herein;

Defendants.

NO. 09-2-00230-3

FINDINGS OF FACT &
CONCLUSIONS OF LAW

This matter coming on for trial on April 5 and 6, 2010, plaintiffs William H. Kiely and Sally Chapin-Kiely appeared through their attorney, Richard L. Shaneyfelt, and defendants Kenneth W. Graves and Karen Graves, as trustees of the Graves Family Trust appeared through their attorneys, Frederick Mendoza and Maya Mendoza-Exstrom, of the Mendoza Law Center, PLLC, and the court, having considered the file in this matter and the testimony of Susan Ambrosius, Carol Cahill, Daniel Blood, Sally Chapin-Kiely, Toby Sheffel, William Kiely, Kenneth Graves, Robert Graves, Karen Graves, Suzanne Wassmer, Dominic Smith, and Vivian Chapin, as well as the arguments of counsel; the court having also considered the admitted exhibits and, with the permission of the parties and not in their presence, having viewed the property on April 6, 2010, and now being fully advised by argument of legal counsel; and having rendered a Memorandum Opinion after trial dated May

ORIGINAL

1 18, 2010, filed herein, makes the following:

2 **FINDINGS OF FACT**

3 1. Plaintiffs, William H. Kiely and Sally Chapin-Kiely, are husband and wife, form a marital
4 community under the laws of State of Washington, and reside in Jefferson County, Washington.
5 Plaintiffs are the owners of the West 84 feet of Block 7, all of Block 9, and the East 37 feet of Block 11, F.H.
6 Winslows Addition to the City of Port Townsend, as per Plat recorded in Volume 1 of Plats, Page 12, records of
7 Jefferson County, Washington.

8 2. Defendants, Kenneth W. Graves and Karen R. Graves, are Trustees of the Graves Family Trust,
9 reside in King County, Washington, but own Lot 10, Block 2 of the Power Addition to the City of Port
10 Townsend as per Plat recorded in Volume 2 of Plats, Page 120, Jefferson County, Washington, together with the
11 vacated alley contiguous thereto.

12 3. Said alley was platted wholly within the Power Addition, lies between the parties' two parcels
13 (Exhibit 27) and is depicted as "vacated alley" on Exhibit 1, the Anderson survey. ~~The area of Lot 10 and the~~
14 ~~vacated alley northerly of the hog wire fence~~ is the disputed area between the parties and is legally described in
15 Exhibit "A" attached hereto.

16 4. No person remembers the alley ever being opened or used as a public right-of-way nor is there
17 any record of it having been opened presented in court, and thus, the court finds that the alley was never opened
18 or used by the public as an alley.

19 5. The alley was formally vacated by the City of Port Townsend by ordinance on February 17,
20 2009, (Exhibit 28).

21 6. Plaintiffs claim title to the disputed area by adverse possession. Defendants claim title to the
22 disputed area through their deed and as a result of the vacation proceeding and payment to the City of Port
23 Townsend as shown by Exhibit 28.

24 7. There is a hog wire fence, which runs along the southerly boundary of the disputed area. That
25 fence has been in existence as long as the parties or witnesses can remember. Kenneth Graves testified that it
26 has been there since he was a kid. Exhibits 12 through 18 are current pictures of the fence.

27 8. There is a shed and cottage on Plaintiffs' property as shown in Exhibit 1 and pictured in Exhibit
28

1 2.

2 9. The cottage actually encroaches into the alley as depicted in Exhibit 1. The easterly
3 approximately one-fourth of the disputed area is used and historically has been used as a parking area for the
4 cottage and shed.

5 10. Daniel Blood testified that he owned Plaintiff's property (1123 Garfield) from 1981 until 1987.
6 He used the disputed area to store building materials. He had a trailer parked in the disputed area to support his
7 masonry and tile contracting business and used the disputed area as he wanted to use it, for his business. During
8 his ownership, Lot 10 remained unused. Mr. Sheffel also recalls Mr. Blood's use of the disputed area for his
9 business and remembers the hog wire fence as the boundary between 1123 Garfield and Lot 10.

10 11. In 1993 Carol Cahill moved onto the property. At that time, Duncan Watters lived there as well
11 and had developed an extensive artistic garden in the disputed area. Mr. Watters used the hog wire fence to
12 support his fava beans and other plants while he resided there.

13 12. It is clear from the testimony of Ms. Cahill and Ms. Ambrosius that during the time Mr. Watters
14 lived on the property he made exclusive use of the disputed area for his impressive garden. He also used the
15 cottage for his bakery business (Exhibit 31) and customers of that business would park in the eastern end of the
16 disputed area next to the cottage and shed. Exhibit 2 provides detail regarding Mr. Watters' garden, which is
17 supported by the testimony. It is clear that from at least 1993 through 2000, Mr. Watters cultivated and used the
18 disputed area in connection with his occupancy of 1123 Garfield and treated the disputed area as his property.
19 Mr. Watters left the property when Plaintiffs purchased the property in 2000.

20 13. From 2000, until this litigation commenced Mr. Kiely mowed and "weed wacked" the disputed
21 area. (Testimony of Vivian Chapin). Plaintiffs are not gardeners and did not continue to use the area as a
22 garden; however, Plaintiffs did maintain most of the disputed area up to the hog wire fence except the portion of
23 the west, which he allowed to become overgrown with blackberries.

24 From the foregoing Findings of Fact, the court makes the following:

25 **CONCLUSIONS OF LAW**

- 26 1. The court has jurisdiction over the parties and subject matter of this action.
27 2. In proceedings prior to trial Defendants moved for summary judgment asserting that

1 Plaintiffs could not prevail in an adverse possession action as the property involved was a dedicated alley which
2 had not been vacated.

3 3. Judge Wood issued his Memorandum Opinion and Order, filed March 29, 2010 [CP 38],
4 in which he found Erickson Bushling v. Makne Lumber Co., 77 Wn. App. 495, 891 P.2d 750 (Div. II, 1995) to be
5 dispositive. Judge Wood held that the alley, while dedicated, was unopened. Thus, following the holding in
6 Erickson, while the City had an easement for a "public right of passage", an adverse possession claim could lie
7 against the fee ownership which is vested in adjoining landowners.

8 4. Defendants argued that Judge Wood was wrong, asserting that Erickson relied on the
9 statute which automatically vacated a dedicated road if it is unopened for five years after its dedication.
10 Defendants are correct asserting that the statute does not apply to streets dedicated for public rights of way
11 within an incorporated city. However, the Erickson Court did not rely on the statute in its analysis that adjoining
12 landowners each own the fee interest in the right of way which is subject to adverse possession. The remaining
13 cases cited by defendants in closing argument, Brokaw v. Town of Stanwood, 79 Wash. 322, 140 Pac. 358
14 (1914), Miller v. King County, 59 Wn. 2d 601, 36 P.2d 304 (1962), Martin v. Walters, 5 Wn. App. 602, 490
15 P.2d 138 (Div. II, 1971) and Hunt v. Matthews, 8 Wn. App. 233, 505 P.2d 819 (Div. I, 1973) are distinguishable.

16 5. This court will not reconsider Judge Wood's ruling on summary judgment, which
17 allowed the case to proceed to trial.

18 6. Plaintiffs William H. Kiely and Sally Chapin-Kiely should have title quieted in their names to
19 the disputed area as shown on Exhibit 1, bordered by the hog wire fence to the south. *John W*

20 7. Plaintiffs and their predecessors in interest have made exclusive, actual and
21 uninterrupted, open and notorious and hostile use of the disputed area under a claim of right made in good faith
22 for a period exceeding ten years from the filing of their complaint herein. Plaintiffs and their predecessors made
23 use of the property as set forth in the findings of fact above that would have put Defendants on notice for more
24 than ten years that a claim was being made to ownership of the disputed area up to the hog wire fence and its
25 extension to the east.

26 8. The evidence supports Plaintiffs' claim that during at least the ten years prior to the
27 filing of Plaintiffs' complaint, the Defendants made no use of the disputed area.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Defendants had actual notice of the Plaintiffs' and their predecessors' use of the disputed area.

10. Plaintiffs' and their predecessors use of the disputed area was continuous for more than ten years prior to the filing of the complaint herein.

11. Defendants' vacation of the City's easement interest in the alley did not affect Plaintiffs' underlying adverse possession claim to the servient estate.

DONE IN OPEN COURT this 2 day of July, 2010.

CRADDOCK D. VERSER
JUDGE
CRADDOCK D. VERSER, JUDGE

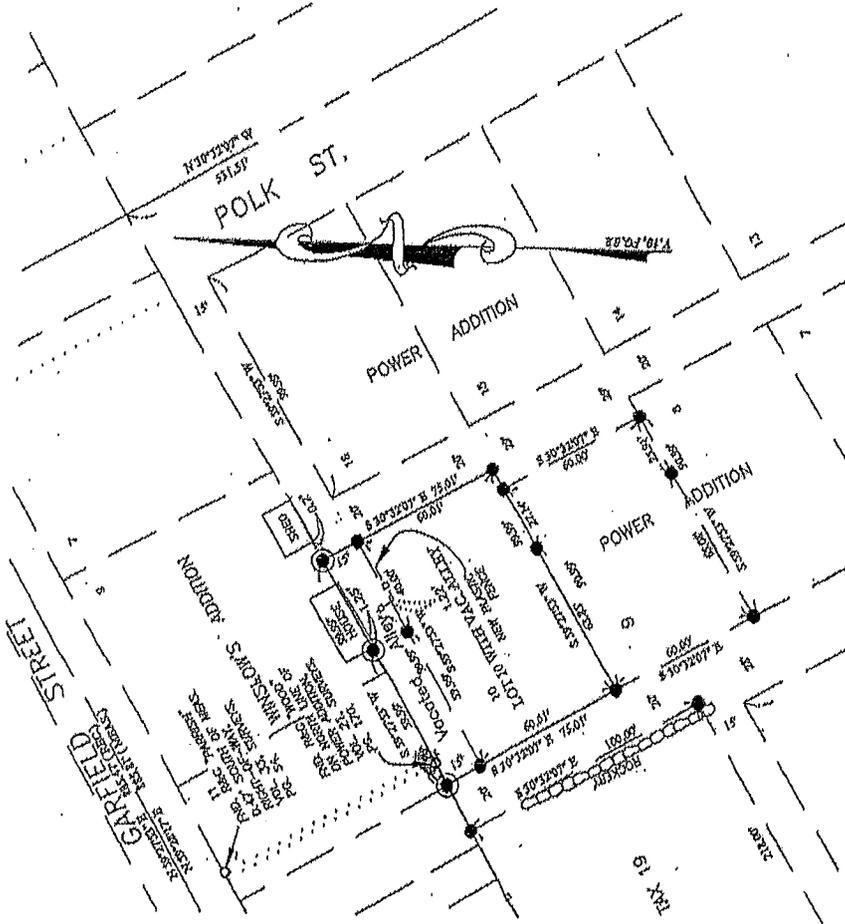
Presented by:

Approved for Entry, Notice
Of Presentation Waived, Copy Received:
MENDOZA LAW CENTER, PLLC

Richard L. Shaneyfelt
Richard L. Shaneyfelt, WSBA #2969
Attorney for Plaintiff

By: Frederick Mendoza
Frederick Mendoza, WSBA #6021
Attorney for Defendants

**SURVEY OF LOT LINE ADJUSTMENT
LOT 10 & CONTIGUOUS ALLEY, BLOCK 2, POWER ADDITION,
SEC. 2, TWP. 30 N., RANGE 1 WEST, W. M., JEFFERSON COUNTY, WASHINGTON**



LEGAL DESCRIPTIONS

REFER TO STATEMENT OF NEXT RECORDING PAGE 2 309
FILED UNDER ADDRESSING PERMITS 2/20/21
AND CONTAINING FORM FOR ALLEY VACATION FILED
UNDER ADDRESSING PERMITS 2/20/21

APPROVALS

DEPARTMENT OF ENVIRONMENTAL SERVICES

 DEPARTMENT OF ENVIRONMENTAL SERVICES
 CITY OF PORT TOWNSEND

JEFFERSON COUNTY ASSessor APPROVAL

 JACK WESTWOOD
 COUNTY ASSESSOR

BY 
 David Howell
 CITY ENGINEER

SURVEYOR'S NOTES:

- LEGEND:**
- SET 1/2" REBAR & COP, STAMPED "ANDERSON 27685".
 - 1/2" REBAR & COP, STAMPED "ANDERSON 27685" PER VOL. 24 OF SURVEYS, PAGES 128, 129 & 130.
 - FOUND CONCRETE MONUMENT WITH BRASS DISC & REBAR IN RIGHT CORNER (11-09)
- SURVEYOR'S NOTES:**
- CONSISTENT WITH THE GEODETIC CONTROL AND MONUMENTATION PLAN FOR THE CITY OF PORT TOWNSEND. (VOLS. SURVEYS, PAGES 1-70)
 - EQUIPMENT USED:
THIS SURVEY WAS PERFORMED USING A TOPCON GTS 304-D ELECTRONIC TOTAL STATION THEODORE/LEICA, DURING CLOSED RANDOM TRAVERSES FROM AND BETWEEN EXISTING PLAT MONUMENTS.
 - CONTROL ACCURACY:
THIS SURVEY MEETS OR EXCEEDS STATE MINIMUM ACCURACY REQUIREMENTS OF 1:5,000 FOR (1) CITY-RESIDENTIAL AND SUBDIVISION LOTS PER W.A.C. 302-150-060.

GRAPHIC SCALE



REFERENCE SURVEYS:

- VOL. 1 OF PLATS, PG 120 (POWER ADD.)
- VOL. 1 OF PLATS, PG 17 (WINDMILLS ADD.)
- VOL. 21, SURVEYS, PAGES 128, 129, 130 (PARISH)
- VOL. 21, SURVEYS, PG. 172 (WOOD)

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY
 MADE BY ME OR UNDER MY SUPERVISION IN
 ACCORDANCE WITH THE SURVEYING ACT
 ACT AT THE REQUEST OF:
 GRAVES FAMILY TRUST
 PREPARED BY: J. ANDERSON, P.E. & P.L.S.
 CERTIFICATE NO. 27685



**ANDERSON
 CIVIL ENGINEERS
 & SURVEYORS**
 PORT TOWNSEND, WA 98068
 (360) 385-0398

RECORD OF SURVEY

PERFORMED IN JEFFERSON CO., WA FOR:
 GRAVES FAMILY TRUST
 PORT TOWNSEND, WA

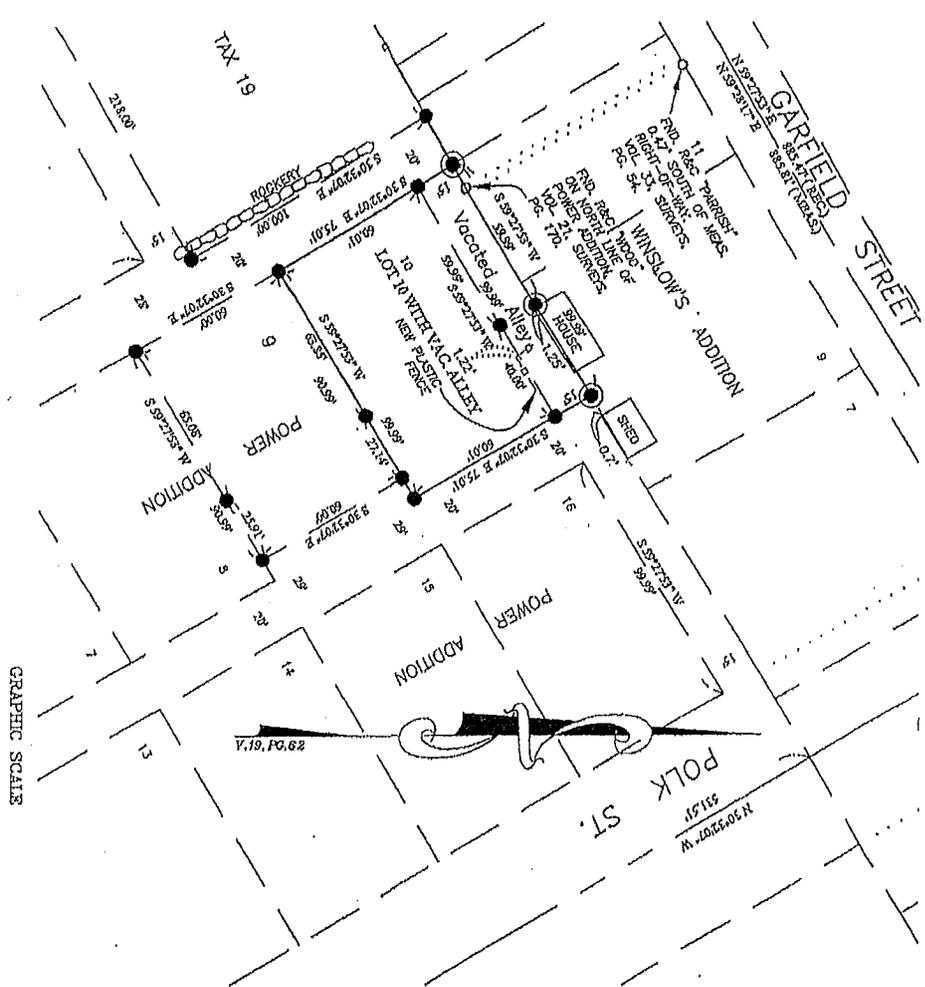
RECORDING CERTIFICATE

FILED FOR RECORD THIS 20th day of March 2021
 AT 10:54 AM OF SAID COUNTY OF JEFFERSON
 AT THE REQUEST OF:
 ANDERSON CIVIL ENGINEERS AND SURVEYORS
 BY: J. Anderson, P.E. & P.L.S.
 DEPUTY ASSESSOR/TAXPAYER ADDITION/SUBT. OF RECORDS

SHEET	1	OF	1
SCALE	1" = 30'		
SURVEYED	DATE	BY	
FIELD BOOK		NO.	
DRAWN	DATE		
CHECKED	DATE		
FILE NO.			

PLS
 CP-167
 Exhibit A

**SURVEY OF LOT LINE ADJUSTMENT
LOT 10 & CONTIGUOUS ALLEY, BLOCK 2, POWER ADDITION,
SEC. 2, TWP. 30 N., RANGE 1 WEST, W. M., JEFFERSON COUNTY, WASHINGTON**



REFERENCE SURVEYS:
VOL. 2 OF PLATS, PG. 120 (POWER ADD.)
VOL. 1 OF PLATS, PG. 17 (F. HANAWSON'S ADD.)
VOL. 33, SURVEYS, PG. 54 (PARISH)
VOL. 21, SURVEYS, PG. 170 (WOOD)



SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION IN ACCORDANCE WITH THE SURVEYING ACTS AND REGULATIONS OF THE DISTRICT OF COLUMBIA.

DELEGATED BY: GRAVES FAMILY TRUST
DATE: 2/23/09
SURVEY NO. 27883



ANDERSON CIVIL ENGINEERS & SURVEYORS
PORT TOWNSEND, WA 98368
(360) 325-0898

RECORD OF SURVEY
Prepared by: ANDERSON CIVIL ENGINEERS & SURVEYORS
PORT TOWNSEND, WA

RECORDING CERTIFICATE
FILED FOR RECORD THIS 2 DAY OF March, 2009
AT THE CLERK'S OFFICE OF THE CLERK OF SUPERIOR COURT IN AND FOR THE DISTRICT OF COLUMBIA.
BY: Debra L. Galt, Deputy Clerk of Superior Court

SHEET: 1 OF 1
SCALE: 1" = 30'
SURVEYED: ARR SIB
FIELD BOOK: #10
DRAWN: ARR
CHECKED: JVA
FILE: 09 VA BOD.dwg

LEGAL DESCRIPTIONS
SEE TO STATEMENT OF PART RECORDED, MAP, Z, 100
FILED UNDER ANDERSON'S FILE NO. 27883 BY
AND ORDINANCE NO. 3065 FOR ALLEY VACATION/ADDED
UNDER ANDERSON'S FILE NO. 27883

APPROVALS
DEVELOPMENT SERVICES DEPARTMENT APPROVAL:
DATE: 2/23/09
CITY OF PORT TOWNSEND

JEFFERSON COUNTY ASSESSOR APPROVAL:
Sharon Shallop, 3/2/09
JACK WESTERDAHL, COUNTY ASSESSOR
BY: Debra L. Galt, DEPUTY CLERK

SURVEYOR'S NOTES:

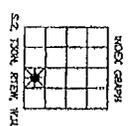
BASIS OF BEARING:
CONSISTANT WITH THE GEODETIC CONTROL AND MONUMENTATION PLAN FOR THE CITY OF PORT TOWNSEND, (VOL. 19, SURVEYS, PG. 61-70)

EQUIPMENT USED:
THIS SURVEY WAS PERFORMED USING A TOPCON GTS 301-D ELECTRONIC TOTAL STATION THEODOLITE/EDM, DURING CLOSED RANGING TRAVELERS FROM AND BETWEEN EXISTING PLAT MONUMENTS.

CONTROL ACCURACY:
THIS SURVEY MEETS OR EXCEEDS STATE MINIMUM ACCURACY REQUIREMENTS OF 1:5,000 FOR (a) CITY-RESIDENTIAL AND SUBDIVISION LOTS PER W.A.C. 332-130-090.

LEGEND:

- SET 1/2" REBAR & CAP, STAMPED ANDERSON 27865.
- 1/2" REBAR & CAP, STAMPED ANDERSON 27867 PER VOL. 34 OF SURVEYS, PAGES 128, 129 & 130.
- FOUND CONCRETE MONUMENT WITH BRASS DISC & PUNCH IN IRON CASE (11-C-6)





1123 Garfield St, Por

PLAINTIFF EXHIBIT #2
Aerial Google Earth
29 February 2004 (See Large Exhibit)



540949

Page: 1 of 3
03/02/2008 11:17A
ORD 44.00

Jefferson County Aud KENNETH GRAVES

Pam Kolacy, MMC, City Clerk
City of Port Townsend
250 Madison Street, Suite 2
Port Townsend, WA 98368

ORDINANCE NO. 3005

AN ORDINANCE VACATING THE ALLEY RIGHT-OF-WAY LYING NORTH OF
BLOCK 2 OF THE POWER ADDITION TO THE CITY OF PORT TOWNSEND;
ESTABLISHING CONDITIONS TO THE STREET VACATION; AND
ESTABLISHING AN EFFECTIVE DATE

Reference Documents:

Lot Line Adjustment Statement of Intent, AFN 540951
Record of Survey, AFN 540952
Hold Harmless Agreement, AFN 540952

Grantor: City of Port Townsend, a municipal corporation
Grantees: Kenneth W. & Karen Graves, husband & wife

Assessor's Parcel Number: 990-000-207

WHEREAS, the City Council for the City of Port Townsend has considered Street
Vacation Application No. LUP08-077 and following due notice held a public hearing upon the
application; and

WHEREAS, the vacation request involves a section of alley right-of-way lying north
of Block 2 in the Power Addition to the City of Port Townsend. The alley segment is
approximately 100 feet in length and 15 feet in width; and

WHEREAS, the City Council for the City of Port Townsend adopted Findings of Fact
and Conclusions concerning the alley vacation on October 20, 2008; and



WHEREAS, the Council's Findings and Conclusions approved in concept the proposed vacation subject to petitioners paying for an appraisal of said alley and paying 100% of the appraised value of the land; and

WHEREAS, the Council's Findings and Conclusions also conditioned the vacation approvals upon petitioners submitting a Lot Line Adjustment application to merge the vacated alley into petitioner's adjoining lands and upon the petitioner signing a Hold Harmless document approved by the City Attorney that releases the City from any future damage claims resulting from existing right-of-way encroachments and/or any adverse possession claim; and

WHEREAS, petitioners have been provided with a Hold Harmless document approved by the City Attorney and have indicated their willingness to sign the Hold Harmless document provided to them. Furthermore, they have now paid full appraised value of the subject alley to the City and have submitted a Lot Line Adjustment application, which has been processed and preliminarily approved by the DSD Director subject to final City Council approval and recording of the alley vacation Ordinance.

NOW, THEREFORE, the City Council of the City of Port Townsend ordains as follows:

Section 1. Subject to the conditions in Section 2 of this Ordinance, the following right-of-way is hereby vacated to Kenneth W. & Karen Graves: ; ; ; .

That portion of the 15 foot wide alley contiguous to Lot 10, Block 2 of the Power Addition to the City of Port Townsend as per plat recorded in Volume 2 of Plats, page 120, Jefferson County, Washington, being a portion of Section 2, Township 30 North, Range 1 West, W.M., in the City of Port Townsend, more particularly described as follows:

- Beginning at the Northwest corner of said Lot 10,
- Thence North along the Northerly prolongation of the Westerly line to the Northerly boundary of said plat of the Power Addition;
- Thence Easterly along said Northerly line to the intersection with the Northerly prolongation of the Easterly line of said Lot 10;
- Thence Southerly along said Northerly prolongation to the Northeast corner of said Lot 10;
- Thence Westerly along the Northerly line of Lot 10 to the Point of Beginning.

Situate in Jefferson County, Washington.

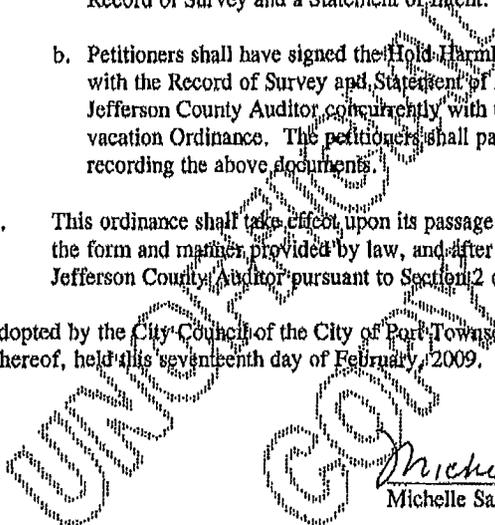


Section 2. Vacation of the alley right-of-way is conditioned on the following:

- a. Petitioners shall adhere to all conditions of the Lot Line Adjustment, which received preliminary approval by the City DSD Department on November 6, 2008 (File No. LUP08-090). This Lot Line Adjustment would merge the vacated right-of-way into petitioners adjoining land via the filing of a Record of Survey and a Statement of Intent.
- b. Petitioners shall have signed the Hold Harmless document, which together with the Record of Survey and Statement of Intent shall be filed with the Jefferson County Auditor concurrently with the recording of this street vacation Ordinance. The petitioners shall pay for all fees associated with recording the above documents.

Section 3. This ordinance shall take effect upon its passage, approval and publication in the form and manner provided by law, and after it has been recorded with the Jefferson County Auditor pursuant to Section 2 of this ordinance.

Adopted by the City Council of the City of Port Townsend, Washington, at a regular meeting thereof, held this seventeenth day of February, 2009.



Michelle Sandoval
Michelle Sandoval, Mayor

Attest:

Approved as to Form:

Pamela Kolacy
Pamela Kolacy, MMC, City Clerk

John P. Watts
John P. Watts, City Attorney