

66245-7

KHN/66245-7

Court of Appeals No. 662457-I

BEFORE THE WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

GREGG and KELLY SMITH
Respondents/Cross-Appellants/Plaintiffs

vs.

LARRY L. PETERSON and SUSAN PETERSON
Appellants/Cross-Respondents/Defendants

On Appeal from the King County Superior Court
KCSC Case No. 08-2-22750-2SEA

2011 JUN 22 PM 1:51



CROSS-APPELLANTS GREGG AND KELLY SMITH'S
REPLY BRIEF ON CROSS-APPEAL

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ORIGINAL

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I. INTRODUCTION

This matter involves a boundary line dispute between two neighbors who own parcels on the Lake Washington lakeside. Each property owner owns a dock that is well within their property lines. Of concern here is a third dock (also referred to as a “boathouse”), which consisted of a (i) wooden dock; (ii) two (2) boat slips (on either side of the wooden dock); and, (iii) a removable canopy, that straddled the agreed boundary that followed a fence line that had existed on the property for decades (hereinafter collectively referred to as the “Shared Dock”).

In their response to the Smiths’ Cross-Appeal, Larry and Susan Peterson (“the Petersons”) do much to attempt to cloud the issues further. However, as will be argued herein, the record below clearly establishes that the Smiths proved that the common, agreed boundary followed a common-boundary fence line for over 5 decades, that the Shared Dock is owned jointly by both parties, and that the fence-line between the two properties should be extended out to the Shared Dock, thereby dissecting the Shared Dock in half.

The lower court erred by finding that the installation of a gate for ingress and egress purposes amounted to “adverse possession” by the Petersons of a portion of the Smiths’ property as well as the Shared Dock. For those reasons, the lower court’s ruling on the property line and the

Shared Dock should be reversed and vacated, and this Court should remand this matter back to the lower court to enter an order consistent with the agreed, boundary line demarcated by the fence and Shared Dock as was proven at trial.

II. ARGUMENT

1. THE SMITHS PROPERTY DESIGNATED THE ASSIGNED ERRORS OF THE LOWER COURT

RAP 10.3(a)(4) provides that: “A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error.” In their responsive brief, the Petersons note that it is unclear which Findings of Facts the Smiths assign error to. Nothing in RAP 10.3(a)(4) specifically requires the identification of the enumerated findings of facts in issue. While the Petersons concede (and the Smiths agree) this is not a crucial, fatal error, they raise it in their brief.

The Smiths submit that their designation of the Assignments of Error in their brief is sufficient and meets the requirements of RAP 10.3(a)(4). However, to the extent they need to be tied to specific “findings of fact”, the Smiths clarify that the following factual findings and conclusions of law are challenged consistent with the arguments set forth in their opening brief on the cross-appeal: Finding of Fact Nos. 5, 6,

7, 8, 9, 10, 11, 12, 13 and 14; Conclusion of Law Nos. 2, 3, 4, 5, 6 and 8.

2. THE CONDUCT OF THE PETERSONS ESTABLISHES THAT THEY MANIFESTED THE FENCE-LINE AND SHARED DOCK AS THE ACCEPTED BOUNDARY

(A) The Petersons' Conduct and Admissions Were Consistent with the Accepted Boundary Line

Under Washington law, if adjoining landowners recognize and acknowledge a common boundary, then the courts will consider those to be the “true dividing line” between the properties. *Lilly v. Lynch*, 88 Wn.App. 306, 316, 945 P.2d 727 (1997). Both parties cite to *Lamm v. McTighe*, 72 Wash.2d 587, 593, 434 P.2d 565 (1967) as to the elements of meeting a boundary by acquiescence: (1) The line must be certain, well defined, and in some fashion physically designated upon the ground, e.g., by monuments, roadways, *fence lines*, etc.; (2) in the absence of an express agreement establishing the designated line as the boundary line, the adjoining landowners, or their predecessors in interest, *must have in good faith manifested, by their acts, occupancy, and improvements* with respect to their respective properties, a mutual recognition and acceptance of the designated line as the true boundary line; and (3) the requisite mutual recognition and acquiescence in the line *must have continued for that period of time required to secure property by adverse possession*.

(Emphasis added) *Lamm v. McTighe*, 72 Wash.2d 587, 593, 434 P.2d 565

(1967).

The Petersons argue in their responding brief, that the installation of a “gate” at the end of the long existing fence line (which the Petersons, and the lower court, termed a “veer”) somehow obviates the wealth of evidence that the parties decades’ long adoption of the standing fence line and use of the Shared Dock by the Heaths, the Wolfes and then later the Petersons, as the accepted boundary line by the parties. Moreover, the Petersons give short shrift to their pre-litigation admissions against interest that the fence-line was the consistent property line, and the Shared Dock was owned equally by the two neighbors. The Petersons do not adequately address, however, that their own admissions and actions directly contravene their post-litigation denials of the common boundary line between the two properties, including the 50% ownership of the Shared Dock. The Petersons’ objections to the contrary, the legal elements are all met, and the Court should vacate the ruling of the lower court.

(i) The Petersons Acknowledged When They Purchased the Property the Heaths owned 50% of the Shared Dock

At trial evidence was admitted that that when the Petersons purchased their property, they acknowledged in writing that they took it subject to a 50% interest in the Shared Dock with the Heaths. In fact, the purchase and sale agreement signed by the Petersons and the Wolfes

unambiguously stated that the Petersons only had a ½ interest in the Shared Dock.¹

It is understood that one-half of the boat house belongs to the subject property. Seller shall take the steel hangers from the boat house.²

The Smiths also were specifically told that a 50% interest in the Shared Dock transferred with the sale of the property to them in 2007.³

I talked to Larry Peterson about the boathouse last night....He absolutely agreed that our side of the boathouse is still ours (soon to be yours).⁴

As they did in the trial court, the Petersons again argue that the doctrine of “merger” extinguishes any argument that the Petersons’ admissions, both before and after the purchase of their property, have any legal weight. The Petersons cite to only one case *Ross v. Kirner*, 162 Wn.2d 493, 172 P.3d 701 (2007) to support the argument that any acknowledgement of the boundary and the ownership of the Shared Dock was somehow extinguished by the merger into a deed. However, the *Ross* case is readily distinguishable.

First—*Ross* did not deal with a boundary case. Second—the Washington Supreme Court held that the doctrine of merger as articulated

1 Appendix #5

2 Appendix #5, “Addendum to Earnest Money Agreement Dated April 30, 1971”, signed by Larry Peterson, Purchaser.

3 RT2, 249:24 to 252:15; Appendix #9

4 Appendix #9, Tammy Heath email dated July 22, 2007. Again the admissions made by Larry Peterson to Tammy Heath are consistent with his admissions that the

by the Petersons does not apply to actions such as fraud, misrepresentation or mistake. Nowhere in *Ross* did the court discuss issues over boundary disputes. See also *Black v. Evergreen Land Developers, Inc.*, 75 Wash.2d 241, 450 P. 2d 470 (1969):

It has long been the general rule of the law in this state that the provisions of a contract for the sale of real estate, and all prior negotiations and agreements, are considered merged in a deed made in full execution of the contract of sale. (Citations).

However, this rule is not ironclad and in the past this court has found grounds for exceptions.

...

Under such circumstances the doctrine of “partial integration” would apply. That doctrine recognizes the right of contracting parties to reduce some provisions of their contract to written form and to leave others unwritten, trusting the latter to oral expression only. The provisions not in writing may be proved by parol insofar as they are not inconsistent with the written portion. *Barber v. Rochester*, 52 Wn.2d 691, 328 P.2d 711 (1958); *Buyken v. Ertner*, 33 Wn.2d 334, 205 P.2d 628 (1949); 3 Corbin, Contracts § 581 (1960). (Emphasis added)

Id. at 248-50. In *Black* the court held that evidence, including letters and documents during negotiations were admissible and that “no evidence in the record [showed] it was the intention on the part of either party that the oral covenant be merged into either the deed or the earnest money agreement. Rather, the asserted merger in the pleadings of the defendants appears clearly to be an afterthought relied upon by the defendants after suit was taken against them.” *Id.*

In the instant case, the deed could not act as a “merger” of the

parties' intent in the Earnest Money agreement for several reasons. First—in neither of the parties' deeds, are their individual docks, or the Shared Dock, even mentioned in the deeds, or the legal description of the. As such, there is no “omission” since *none* of the deeds mentioned the docks themselves. Second—it is undisputed that the actual legal description and platted boundary lines of the Heath/Smith and Peterson properties are, in fact, inconsistent with the agreed boundary line adopted by the lower court (i.e. the pre-existing fence line).

Finally—the very nature of the doctrine of “boundary by acquiescence” is the recognition and acknowledgment of a common boundary line by the parties. See *Lilly v. Lynch*, supra, at 316. In other words, if all evidence of the parties' intent and recognition exclusive of the deed itself were to be extinguished by merger then it would be virtually impossible to prove a “boundary by acquiescence” claim.

(ii) The Petersons Acknowledged that The Heaths/Smiths owned 50% of the Shared Dock with The King County Assessor's Office and Have Paid the Taxes for same for 18 years

During trial, the Smiths proved that in 1993 the King County Assessor reclassified the Shared Dock as jointly owned by the Petersons and the Heaths/Smiths, and that the King County Assessor assigned value to the Shared Dock and to the Smiths' property for purposes of taxation

and those taxes have been paid and continue to be paid. According to the testimony of Lou Willett, the King County Assessor's office received a request in or about 1993 whereby a "CR" (Characteristic Review) was initiated due at the request of the Petersons, to assess ½ of the Shared Dock to the Heath's property.⁵ Ms. Willett testified that she *then* contacted the Petersons, and confirmed that "half of covered dock belongs to Minor 2030." Ms. Willett further testified that she called the Petersons' residence and spoke with the Petersons' son.⁶ Based upon her investigation and the review initiated by the Minor 2060 (or Peterson) parcel, Mrs. Willett allocated ½ of the Shared Dock to the Heath (or Minor 2030) Parcel.⁷

In their brief, the Petersons argue, *for the first time*, that all of Ms. Willett's testimony must be stricken as "irrelevant" under ER 401, 402, 602, and 701. The Petersons never sought to strike Ms. Willett's entire testimony during the trial, and only objected to the failure to previously identify Ms. Willett as a witness, and the introduction of documentary evidence from the King County Assessor's office. The trial court overruled those objections.⁸ See RAP 2.5(a): "Errors Raised for First

5 RT1 126:9 to 131:2. See also Verbatim Reporter's Transcript, January 26, 2010 Morning Session, ("RT3"), 20:18-24. See also Appendices #s 10-13

6 RT3, 21:7 to 22:21

7 RT3, 32:1-19;

8 See RT1 116:17 to 117:21—counsel for the Petersons objected on the grounds that Ms. Willett was not previously identified, which was overruled by the court. RT1 122:8 to 125:9—objections over the introduction of documents by the witness, which

Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court.” “An issue, theory or argument not presented at trial will not be considered on appeal,” *Ryder v. Port of Seattle*, 50 Wash. App. 144, 150, 748 P.2d 243 (1987) (citing *Herberg v. Swartz*, 89 Wash.2d 916, 925, 578 P.2d 17 (1978)). Because the issue of striking Ms. Willetts’ testimony is being raised in the Petersons’ reply for the first time, this court should disregard that request.

In addition, the Petersons argue that Ms. Willetts’ testimony is irrelevant because the assessors’ office cannot “establish” a boundary line. Once again, the Petersons’ argument misses the mark. As argued above, one of the elements relied upon by the *Lamm* court is, “in the absence of an express agreement establishing the designated line as the boundary line, the adjoining landowners, or their predecessors in interest, *must have in good faith manifested, by their acts, occupancy, and improvements* with respect to their respective properties, a mutual recognition and acceptance of the designated line as the true boundary line.” The testimony of Ms. Willett and the evidence submitted from the King County Assessor’s office was not offered to “establish” a boundary, but rather to establish that the Petersons’ acknowledgement by “their acts, occupancy, and improvements” that the Shared Dock was owned 50% by the

were overruled.

Heaths/Smiths.

The Petersons also argue that Ms. Willett could not “identify” which son she spoke to. Ms. Willett testified that she was, in fact, the person who investigated the CR change request, and she was the person who spoke to the “son” of the Petersons. The fact that she could recall this conversation 17 years later (which were corroborated by her contemporaneous note, which were admitted into evidence), but could not recall which son she spoke to, does not make her testimony any less credible.⁹ What the Petersons cannot address, nor dispute, is that for a period of 18 years, the Heaths, and now the Smiths, have been paying 50% of the property tax for the Shared Dock, and that the records of the King County Assessor’s office indicate that it was *the Petersons* who initiated that change in status.

(iii) The Petersons Do Not Dispute That In Their 2005 Filings with the City of Bellevue, They Admitted the Property Line Dissected the Shared Dock in Half

As demonstrated in the Smiths opening brief on their cross-appeal, Larry Peterson submitted to the City of Bellevue a certified Residential Building Permit Application in 2005.¹⁰ The purpose of that application was to reconfigure his separate dock.¹¹ The permit signed by Mr. Peterson listed him as the “contact person” and he certified that all information he

9 RT3, 21:7 to 22:21

10 Appendices # 6, 7, 8 and 17

provided in his application was “true and correct”.¹² As part of that project, the Petersons contracted with Sea & Shore to draw up the appropriate site map and do the work, and the Petersons submitted them to the City of Bellevue and the Army Corps of Engineers.¹³ In the initial site survey submitted to the City of Bellevue, Larry Peterson indicated that the Peterson/Heath property line went down the fence-line, and through the middle of the Shared Dock. The City of Bellevue later corresponded to Larry Peterson, and requested that Larry Peterson submit a revised certified survey verifying the lateral shoreline boundaries (See Exhibits 10 and 11). Peterson submitted a *revised* survey, again showing that the boundary line dissected the middle of the Shared Dock.¹⁴ This is compelling evidence demonstrating as recent as 2005 the Petersons acknowledged in public documents and filings that not only the fence line was the common, agreed boundary—but that it *did not* proceed along the “gate” but rather continued out, dissecting the Shared Dock in half.

The Petersons do not address this issue anywhere in their reply brief. This evidence further demonstrates that the Petersons “*manifested, by their acts, occupancy, and improvements*” that the fence served as the common boundary line, and that the line naturally extended down the

11 RT1, 75:3-13

12 *Id.* See Appendix #7.

13 RT1, 83:23 to 84:22; Appendices # 8 and 17

14 Ex 13 and 31

middle of the Shared Dock boathouse.

(iv) The Petersons Did Not Exclusively Maintain or Use the Shared Dock

The record below does not support the Petersons' contention that they had exclusive control or use of the Shared Dock, or that the Petersons exclusively maintained, paid for or controlled the Shared Dock. In fact, there was ample evidence that the Heaths regularly contributed to the upkeep of the Shared Dock, used the Shared Dock, and other sources paid for the repairs—not just the Petersons.

For example, in 1997, Marian Heath paid \$2,199.15 (including sales tax) towards those repairs. Marian Heath's grandson, Dean Secord, testified that Marian Heath believed she owned ½ of the Shared Dock, and had paid for her portion of the repairs to the Shared Dock for that reason.¹⁵

There was testimony that for a number of years, the Heaths used the northern boat slip of the Shared Dock, and kept an older boat in that slip in the 1970s and early 1980s.¹⁶ A family friend testified that she recalled playing on the Shared Dock in her youth (through the 1960s and 1970s),¹⁷ and that in 1990 Marian Heath threw Ms. Kozai a bridal shower, and the people used the Shared Dock as part of the bridal shower.¹⁸

15 RT2, 200:11 to 204:7; Appendices # 14 and 15; RT2, 167:4 to 169:2; 169:20 to 170:3

16 RT3, 172:11-23; 174:15 to 175:3; RT2, 232:3-21; 233:6-21 (Appendix #18)

17 RT2, 209:6 to 210:21

18 RT2, 212:1-15; RT2, 229:25 to 231:9; 222:18 to 223:13; 224:19 to 225:3

Finally, Larry Peterson testified that a major repair of the Shared Dock was paid for by Barbee Mill, when logs they had caused damage to the Shared Dock.¹⁹ In addition, a review of pictures over the years that were submitted into evidence *by the Peterson* shows that the Petersons have not been using the northern slip (i.e. the Heath slip)—but in fact were storing a jet ski and boats *on the Peterson (South) side of the Shared Dock*.²⁰

(B) The Installation of the “Gate” at the End of the Common Fence Did Not Extend the Boundary as Found By The Court

The Petersons note in their brief that the addition of a gate onto the end of the common fence extended the boundary to the Northwest, and was consistent with the “accepted” boundary of the two properties. Again, the Petersons either misstate the actual evidence before the trial court, or do not address the cases and other evidence that contradicts the findings of the lower court.

First—at page 17 the Petersons argue that the “Smiths seem to claim that because the ‘veer’ had a gate in it that could be opened from either side, the veer could not be considered to have established a boundary line by acquiescence between the Smith and Peterson properties.” Then—the Petersons go on to argue at page 18 that with, or

19 Peterson Excerpts January 27, 2010 (RT4, 13:3-19; 90:16 to 91:3; 92:10 to 93:12).

20 See Appendix 16 and the full Exhibit 61 submitted by the Petersons.

without a gate, the “veer” formed a “well defined” boundary in accordance with the *Lamm* elements.

The evidence clearly establishes that the “veer” did not “contain” a gate—the veer was essentially the gate.²¹ As noted in the Smith’s opening brief on the cross-appeal, Larry Peterson testified that the purpose of the installation of the “gate” was for “access and egress...*for anybody*.”²² Larry Peterson also testified that the purpose of the gate was to prevent the dogs from both properties from going on either side, but to still allow the Heaths and the Petersons access to the lake and Shared Dock.²³

Moreover, the Petersons do not fully address any of the case law related to the use of a “gate” to adversely possess the property. Again, the Petersons incorrectly argue that it was the Smiths—not the Petersons, who are claiming adverse possession. In fact, the findings of the lower court essentially awarded the Petersons both additional land and virtually all of the Shared Dock based upon the installation of the “gate”. Thus it was *the Petersons* who benefited from the adverse possession. And the cases cited by the Smiths established that the installation of a gate, which permitted ingress and egress, and gave the Heaths full control of access, is not sufficient to constitute a boundary of open, notorious and exclusive

21 See Appendix #4. The pictures show that the takes up at least 2/3 of the alleged “veer”.

22 RT1, 97:14 to 98:12

23 RT1, 98:15-20. See also Appendix #16 which shows the chain link fence that

possession. See *Cole v. Laverty*, 112 Wash.App. 180, 49 P.3d 924 (2002); *Hernandez v. Reed*, 239 P.3d 185 (2010); *Stone v. Lea Brent Family Investments*, 998 So.2d. 448, 455 (2008, Miss.)—Holding: “putting a gate on one's property is not necessarily indicative of adverse possession”; *Nicholls v. Healy*, 37 Mich.App. 348, 350, 194 N.W.2d 727 (1972)—holding: “maintenance of a gate across the right of way if it permitted use of the way ‘would not constitute an obstruction to the way or result in the loss of the way by ouster or adverse possession.’”

3. THE COURT’S DECREED BOUNDARY LINE IS INCONSISTENT WITH THE SURVEYED PLATTED LINES

In their reply, the Petersons argue that the survey completed by Ben Petersen shows that the proper boundary line included most of the Shared Dock on the Peterson property. However, the Petersons are incorrect in asserting that the “only” survey before the court was Ben Petersen’s—in fact there were two additional surveys presented: Cramer Northwest and the declaration and findings of Thomas Woldenport.²⁴

In the surveys presented there were three potential boundary lines. First—there was the deeded, “calculated” line; next—there was the

pre-existed the gate, and did not prevent the Heaths from accessing the Shared Dock.
24 In their reply, the Petersons offer no record citation whatsoever to support what Ben Petersen testified to (see Reply pages 24 to 25). In fact, the Petersons did not arrange for any testimony to be transcribed for this court, including that of the witness Ben Petersen. None of the transcripts designated by the Smiths contain Ben Petersen’s testimony, and the Petersons have not moved this court to augment the record or file an amended Statement of Arrangements. However, because the Petersons have raised this issue, the Smiths are moving the court to supplement the Statement of Arrangements to

“fence” line (excluding the later added gate); and finally, there was a newly drawn “prorated” line.²⁵ In the surveys, the existing platted “calculated” line shows that the actually *deeded* boundary line between the Smiths and the Petersons’ property would provide the Smiths with not only *most* of the Shared Dock, but a significant portion of the Petersons property.²⁶ In the declaration of Thomas Woldendorp submitted to the trial court during post-trial motions, Mr. Woldendorp, a professional surveyor hired to review both the Cramer Northwest Survey obtained by the Smiths (Appendix 3) and the Ben Peterson Survey, opined to the court that it was not appropriate to move the platted, calculated lines to accommodate the parties mistakes in boundaries by “prorating the lots” to fit a new boundary. To do so, it would require participation of all of the neighbors and adjoining landowners. Both Mr. Woldendorp and the Cramer surveys found that the proper method was to accept the existing, accepted fence line and extend the same out to the shoreline.²⁷ In fact, Ben Petersen testified in cross-examination that he agreed with the placement of the calculated line by the Cramer survey.²⁸

The trial court initially, and correctly, found that the existing fence-

include excerpts of the Ben Peterson testimony.

25 See Appendix 20 and attachments thereto; See also Appendix 3

26 See Appendices 3, 20 and 21

27 See CP 769-778; Appendices 3 and 20

28 See Appendix 21, which is the proposed excerpt of Ben Petersen’s cross-examination, (P. 270, line 13 to P. 275, line 20; P. 277, line 4 to page 279, 19.

line was the accepted, acquiesced boundary, and therefore under the existing Washington case law, should have projected out the fence-line to the Shared Dock, which would have equally bisected the Shared Dock. Where the court erred, was by ignoring the existing calculated and fence boundary lines, and by drawing yet another boundary line unrelated to any accepted surveying principal, and using an incorrect *fourth* trajectory out to Lake Washington that had no relationship to either the deeded-calculated line, or the existing fence boundary lines. The court clearly erred by finding that the Smiths had not proven that the Shared Dock had long been agreed to be equally owned by the parties, and that the Shared Dock itself had markers and demarcations (e.g., the meeting point of each party's bulkheads which formed a triangular point down the middle of the wooden dock, the middle of the canopy, or the middle of the two boat slips), that would have led to the conclusion that Wolfes and the Heaths, and then later the Petersons and the Heaths, accepted the Shared Dock as evenly divided.

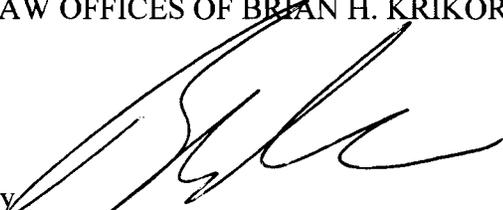
III. CONCLUSION

Based upon all of the foregoing, the Smiths respectfully request that the findings of the trial court related to the mutual boundary by acquiescence be reversed, and that the appropriate boundary be found to be

the fence line, down the center of the Shared Dock as it always been
observed.

Dated: June 22, 2011

LAW OFFICES OF BRIAN H. KRIKORIAN

By 

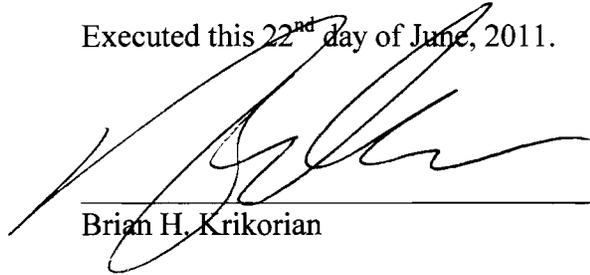
Brian H. Krikorian, WSBA # 27861
Attorneys for Respondents and Cross-Appellants
Gregg and Kelly Smith

On June 22, 2011, I caused to be served a copy of the document described as Respondents' Brief on the interested parties in this action, by United States, First Class Mail and email, addressed as follows:

Charles "Ted" Watts
Oseran Hahn Spring Straight & Watts, P.S.
10900 NE 4th Street, Suite 1430
Bellevue, WA 98004

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

Executed this 22nd day of June, 2011.



Brian H. Krikorian

Appendix 20Declaration of Thomas Woldendorp

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

GREGG SMITH and KELLY SMITH,
husband and wife,

Plaintiffs,

v.

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

Defendants.

No. 08-2-22750-2 SEA

**DECLARATION OF THOMAS
WOLDENDORP**

**DECLARATION OF THOMAS
WOLDENDORP - 1**

LAW OFFICE OF
CATHERINE C. CLARK PLLC
701 Fifth Avenue, Suite 4785, Seattle, WA 98104
Phone: (206) 838-2528 Facsimile: (206) 374-3003

STATE OF WASHINGTON)
) .SS
1 COUNTY OF KING)

2 THOMAS WOLDENDORP, declares:

- 3 1. I am over 18 years of age and have personal knowledge of the matters stated herein.
4
5 2. I am a professional surveyor licensed to perform surveys in the State of Washington.
6
7 3. I am presently employed with Site Survey & Mapping, Inc. 10115 214th Avenue
8 NE, Redmond, WA 98053.
9
10 4. I was asked to review a survey prepared by Ben Petersen and dated March 25, 2010
11 and to confirm its representations. A copy of that survey is attached hereto as
12 Exhibit A.
13
14 5. I did so and concluded that I do not agree with Mr. Petersen's results as more
15 specifically stated below. Given this conclusion, I was asked to draw a separate
16 survey showing the fence line and depicting the court's oral decision rendered on
17 January 29, 2010 which I have done. A copy of that survey is attached hereto as
18 Exhibit B.
19
20 6. As the court has apparently acknowledged, the plat lines in which the Smith
21 Property and the Peterson Property are located does not match lines of occupation.
22 Further, as the Court has also noted, various surveyors have used two different
23 methods to resolve the difference between the plat lines and lines of occupation.
24
25 7. Using the first method the plat distances were held with Lot 36 being held as 42.50
feet wide and Lot 35 as 37.50 feet wide. Lots 10-34 were held as 35.00 feet wide.

**DECLARATION OF THOMAS
WOLDENDORP - 2**

LAW OFFICE OF
CATHERINE C. CLARK PLLC
701 Fifth Avenue, Suite 4785, Seattle, WA 98104
Phone: (206) 838-2528 Facsimile: (206) 374-3003

1 This method resulted in lines of occupation matching plat calculation by between
2 0.20 and 1.20 feet.

- 3 8. The second method is the proportional method used in Peterson's survey, is as
4 follows:

5 Calculations of the north and south lines of block A of the subject plat, based on
6 found monuments, were found to deviate significantly from record dimensions.
7 Accordingly, the discovered excess or deficiency between the calculated block lines
8 was proportioned between the lots within that block relative to the original lot
9 dimensions after full measure was given to the original right-of-ways dedicated at
10 the time of the original plat.

- 11 9. This second method still resulted in more significant differences between lines of
12 occupation and plat than in method 1.

- 13 10. Both methods used similar methods for the lines running east-west. These lines
14 were either made parallel with the south or north plat lines.

- 15 11. In my opinion and frankly as is obvious, the fence as built between the Smith
16 Property and the Peterson Property was not based on either of these survey methods,
17 as the line is not parallel with either the north or south plat lines.

- 18 12. With regard to the position of the new boundary along the fence line as ordered by
19 the court, I have drawn the boundary line on a best fit line through the center of the
20 fence posts. This includes a 1.35 foot section going north from the end of the fence
21 before the fence angles to the Northwest.

- 22 13. My review of the Petersen Survey at Exhibit A is that the boundary line is drawn
23 north of the current fence line by distances varying from 0.3' to 0.6'.
24
25

14. Based on other surveys within the plat of Hillman's Lake Washington Garden of Eden no. 3, Line # 3 as shown on Exhibit B is the first choice boundary extending into Lake Washington. If the court deemed this unacceptable then the second choice would be Line # 2. Line # 1 would not typically be used in the case of the abovementioned plat. Surveyor Peterson in his record of survey no. 20080723900001 states: No bearings are indicated on the original plat for the Block A lot lines extending into Lake Washington. They are assumed to be parallel with the north and south lines of Block A, which are indicated as parallel on the original plat. Accordingly, the bearing of the lot lines within Block A were proportioned based on this surveyors' current calculation of the bearings of the north and south block lines.

15. According to "Brown's boundary control and legal principles" by Walter George Robillard, Curtis Maitland Brown and Donald A. Wilson",
"Considerable error in the closing block of a subdivision may indicate an error in the original location of the subdivision boundary. If an error existed in the original boundary location of the subdivision, and if at a later date the boundary were moved to fit the true deed location of the subdivider, it is not advisable to move the lots by proration to fit the new boundary. Lots once established are unalterable. There must be reasonable proof showing that an error probably existed in the original subdivision boundary location. If there are 10 blocks in a subdivision, nine of which measure very close to the original record and the tenth, existing next to the subdivision boundary, is found to be 30 feet short, the inference is that the original

boundary line was established erroneously and later moved to the true location.

1 *Blocks abutting on subdivision boundaries cause no end of grief to surveyors and*
2 *landowners. Although a lot within a block that adjoins a subdivision boundary may*
3 *be insured by a title company without fear of liability provided that it is described*
4 *by lot number instead of size, the location and size of such lot on the ground may be*
5 *in serious. Two possible solutions exist: (1) prorate the error or (2) give the error to*
6 *the end lot. If the error were brought about by a relocation of an incorrect original*
7 *boundary line, the error would be applied where it occurred; that is, next to the*
8 *boundary line. But if the error were not due to the boundary line being moved from*
9 *its original location and no evidence exists to localize the error on one lot, the error*
10 *would be prorated."*

11
12
13 In the case of this particular plat, historically surveyors have either assumed an error
14 in the plat dimension of Lot 36, or prorated the excess within the block or lastly
15 assumed an error in Lot 36 and prorated. The one common factor in the surveyors'
16 decisions was to use the method which best matched the existing lines of
17 occupation. It is evident in this case that the line of the fence was not based on such
18 parallel lines, but was rather erected in an arbitrary position.
19

20
21 I declare under penalty of perjury of the laws of the State of Washington that the
22 foregoing is true and correct.
23
24
25

**DECLARATION OF THOMAS
WOLDENDORP - 5**

LAW OFFICE OF
CATHERINE C. CLARK PLLC
701 Fifth Avenue, Suite 4785, Seattle, WA 98104
Phone: (206) 838-2528 Facsimile: (206) 374-3003

Signed at Issaquah, Washington this _11th day of August, 2010.



THOMAS WOLDENDORP

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**DECLARATION OF THOMAS
WOLDENDORP - 6**

LAW OFFICE OF
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Phone: (206) 838-2528 Facsimile: (206) 374-3003

EXHIBIT A

RECORD OF SURVEY

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

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

LEGAL DESCRIPTION AREA "A"

COMMENCING AT THE SOUTHWEST CORNER OF LOT 23 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR;
THENCE NORTH 00°59'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.37 FEET;
THENCE SOUTH 84°23'11" WEST A DISTANCE OF 68.04 FEET TO THE SOUTH LINE OF SAID LOT 23;
THENCE CONTINUING SOUTH 84°23'11" WEST A DISTANCE OF 46.87 FEET;
THENCE NORTH 59°16'25" WEST, 90 DEGREES TO SAID BULKHEAD, A DISTANCE OF 8.08 FEET TO THE WESTERLY EDGE OF A CONCRETE BULKHEAD;
THENCE SOUTH 87°57'48" WEST A DISTANCE OF 23.16 FEET TO THE EAST LINE OF A BOATHOUSE ROOF OVERHANG AS IT NOW EXISTS AND THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 87°57'48" WEST A DISTANCE OF 24.13 FEET TO THE WEST LINE OF SAID BOATHOUSE ROOF OVERHANG;
THENCE NORTH 05°28'54" WEST A DISTANCE OF 3.73 FEET TO THE NORTH LINE OF SAID BOATHOUSE ROOF OVERHANG;
THENCE NORTH 87°16'50" EAST A DISTANCE OF 24.11 FEET TO THE EAST LINE OF SAID BOATHOUSE ROOF OVERHANG;
THENCE SOUTH 05°18'53" EAST A DISTANCE OF 3.66 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION SE 62ND STREET

(DERIVED FROM THE LEGAL DESCRIPTIONS FOR TAX PARCELS NUMBERS 3343302030 AND 3343302060)
THE SOUTH 20.75 FEET OF LOT 18, ALL OF LOT 20 AND THE NORTH 4.55 FEET OF LOT 21 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

LEGAL DESCRIPTION TAX PARCEL NO. 3343302060

LOTS 24, 25 AND 26 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, TOGETHER WITH SECOND CLASS SHORELANDS AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF EDMONT TOL, OR ADJUTANT THOMSON, SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON,
TOGETHER WITH THAT PORTION OF LOT 23 LYING SOUTH OF THE FOLLOWING DESCRIBED LINE,
COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 23;
THENCE NORTH 00°59'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.37 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 84°23'11" WEST A DISTANCE OF 68.04 FEET TO THE SOUTH LINE OF SAID LOT 23;

EXCEPT THAT PORTION OF LOT 24 LYING NORTH OF THE FOLLOWING DESCRIBED LINE,
COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 23;
THENCE NORTH 00°59'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.37 FEET;
THENCE SOUTH 84°23'11" WEST A DISTANCE OF 68.04 FEET TO THE SOUTH LINE OF SAID LOT 23 AND THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 84°23'11" WEST A DISTANCE OF 46.87 FEET;
THENCE NORTH 59°16'25" WEST A DISTANCE OF 8.08 FEET TO THE WESTERLY EDGE OF A CONCRETE BULKHEAD;
THENCE SOUTH 87°57'48" WEST TO THE WESTERLY LINE OF SAID SECOND CLASS SHORELANDS.

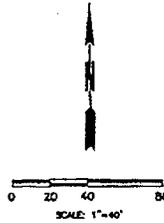
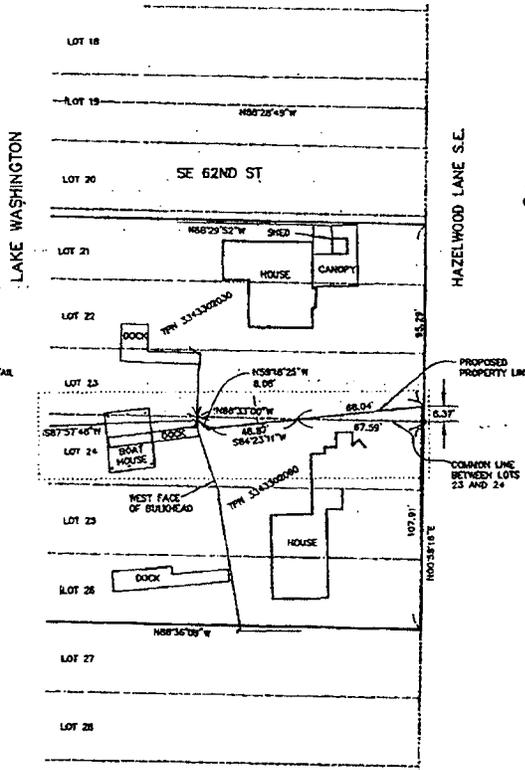
LEGAL DESCRIPTION TAX PARCEL NO. 3343302030

THE SOUTH 20.75 FEET OF LOT 18, ALL OF LOT 20 AND THE NORTH 4.55 FEET OF LOT 21 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, TOGETHER WITH SECOND CLASS SHORELANDS AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF EDMONT TOL, OR ADJUTANT THOMSON, SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON,
TOGETHER WITH THAT PORTION OF LOT 24 LYING NORTH OF THE FOLLOWING DESCRIBED LINE,
COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 23;
THENCE NORTH 00°59'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.37 FEET;
THENCE SOUTH 84°23'11" WEST A DISTANCE OF 68.04 FEET TO THE SOUTH LINE OF SAID LOT 23 AND THE POINT OF BEGINNING;
THENCE CONTINUING SOUTH 84°23'11" WEST A DISTANCE OF 46.87 FEET;
THENCE NORTH 59°16'25" WEST A DISTANCE OF 8.08 FEET TO THE WESTERLY EDGE OF A CONCRETE BULKHEAD;
THENCE SOUTH 87°57'48" WEST TO THE WESTERLY LINE OF SAID SECOND CLASS SHORELANDS.

EXCEPT THAT PORTION OF LOT 23 LYING SOUTH OF THE FOLLOWING DESCRIBED LINE,
COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 23;
THENCE NORTH 00°59'16" EAST ALONG THE EAST LINE OF SAID LOT 23 A DISTANCE OF 8.37 FEET TO THE POINT OF BEGINNING;
THENCE SOUTH 84°23'11" WEST A DISTANCE OF 68.04 FEET TO THE SOUTH LINE OF SAID LOT 23;
THENCE CONTINUING SOUTH 84°23'11" WEST A DISTANCE OF 46.87 FEET;
THENCE NORTH 59°16'25" WEST A DISTANCE OF 8.08 FEET TO THE WESTERLY EDGE OF A CONCRETE BULKHEAD;
THENCE SOUTH 87°57'48" WEST TO THE WESTERLY LINE OF SAID SECOND CLASS SHORELANDS.

SURVEYORS NARRATIVE:

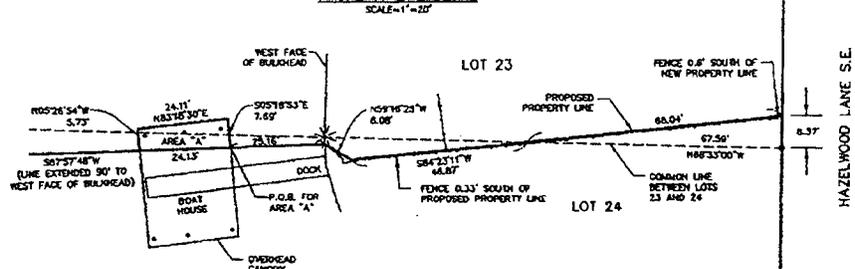
THE PURPOSE OF THIS RECORD OF SURVEY IS TO SHOW THE COURT ORDERED PROPERTY LINE COMMON TO THE SUBSET PARCELS, FOR INFORMATION PERTAINING TO THE ORIGINAL DETERMINATION OF THE PARCEL BOUNDARIES BY THE SURVEYOR, PRIOR TO SAID COURT ORDER. SEE RECORDS OF SURVEY PAGES 33 AND 34, AND RECORDED UNDER KING COUNTY RECORDING NUMBER 2008072400001



LEGEND

- WOOD FENCE
- CHARBURN FENCE
- TAX PARCEL NUMBER
- SET TAKEN IN LEAD WITH WALKER STAMPED "BWP 17676" ON CONCRETE BULKHEAD
- SET REBAR AND CAP STAMPED "PLS 17676" POINT OF BEGINNING.

PROPERTY LINE DETAIL



RECORDER NO: RECORDER'S CERTIFICATE FILED FOR RECORD THIS _____ DAY OF _____ 20 _____ AT _____ M IN BOOK _____ OF SURVEYS AT PAGE _____ AT THE REQUEST OF BEN V. PETERSEN COUNTY RECORDER / AUDITOR	LAND SURVEYOR'S CERTIFICATE THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF: LARRY PETERSON IN _____ MARCH _____ 2010 BEN V. PETERSEN, CERTIFICATE NO. 17676		BOUNDARY SURVEY FOR LARRY PETERSON 6220 HAZELWOOD LANE SE BELLEVUE, WA 98006	INDEXING INFORMATION SW 1/4 SW 1/4 SECTION: 20 TOWNSHIP: 24N RANGE: 5E COUNTY: KING	355 NW Otsewa Boulevard, #221 Issaquah, Washington 98027 (425) 313-8376 (fax) 313-8379	DRAWN BY: KAP DATE: MAR 25, 2010 JOB NO.: 6040 CHECKED BY: BWP SCALE: 1" = 40' SHEET: 1 OF 1
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EXHIBIT B

**EXISTING LEGAL DESCRIPTION
PARCEL NO. 334330-2030**

LOT 21, EXCEPT THE NORTH 4.28 FEET THEREOF, AND LOTS 22 AND 23 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR.
TOGETHER WITH SECOND-CLASS SHORELANDS, AS CONVEYED BY THE STATE OF WASHINGTON.
SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON, AS TO LOTS 22 AND 23;
SITUATE IN THE CITY OF BELLEVUE, COUNTY OF KING, STATE OF WASHINGTON.

**EXISTING LEGAL DESCRIPTION
PARCEL NO. 334330-2080**

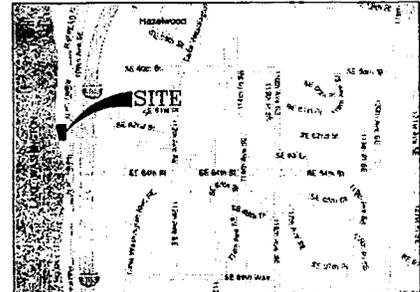
LOTS 24, 25 AND 26 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR.
TOGETHER WITH SECOND-CLASS SHORELANDS, AS CONVEYED BY THE STATE OF WASHINGTON.
SITUATE IN FRONT OF, ADJACENT TO, OR ABUTTING THEREON, AS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

GENERAL NOTES

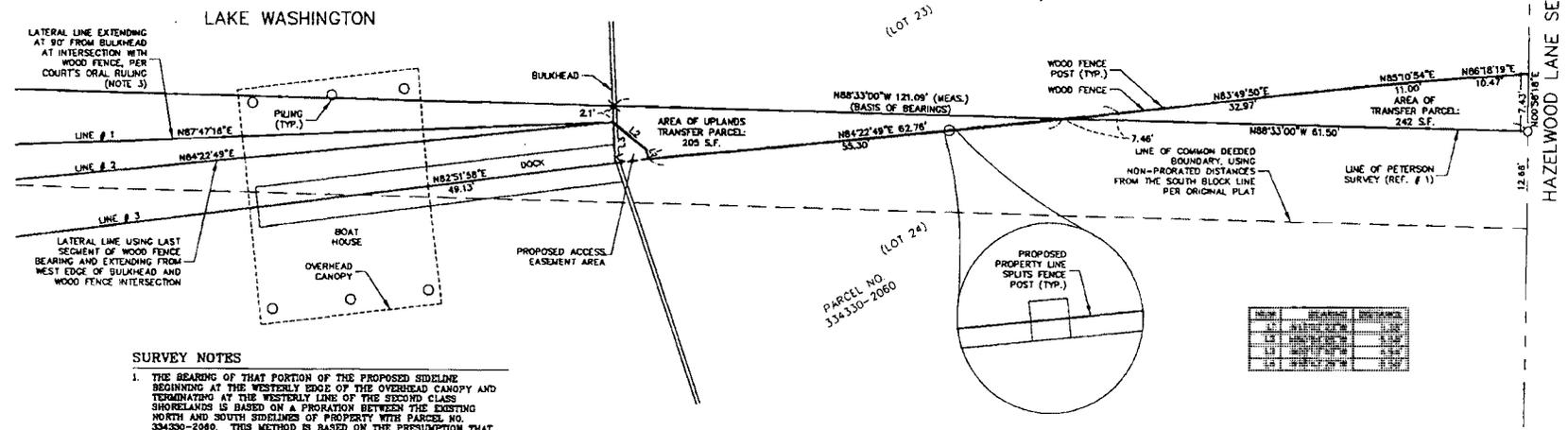
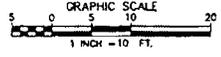
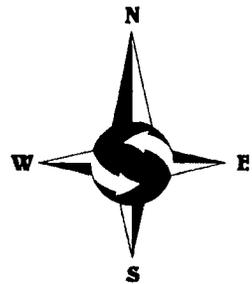
1. THIS SURVEY WAS COMPLETED WITHOUT BENEFIT OF A CURRENT TITLE REPORT. EASEMENTS AND OTHER ENCUMBRANCES MAY EXIST ON THIS PROPERTY THAT ARE NOT SHOWN HEREON.
2. INSTRUMENTATION FOR THIS SURVEY WAS A 3-SECOND NIKON MPL 304 TOTAL STATION. PROCEDURES USED IN THIS SURVEY MEET OR EXCEED STANDARDS SET BY WAC 332-130-090.
3. THE INFORMATION ON THIS MAP REPRESENTS THE RESULTS OF A SURVEY MADE IN APRIL 2010 AND CAN ONLY BE CONSIDERED AS INDICATING THE GENERAL CONDITIONS EXISTING AT THAT TIME.
4. ALL MONUMENTS WERE LOCATED DURING THIS SURVEY UNLESS OTHERWISE NOTED.

BASIS OF BEARINGS

ACCEPTED THE BEARING OF N88°33'00"W FOR THE COMMON LINE OF LOTS 23 AND 24 IN BLOCK A OF HILLMAN'S LAKE WASHINGTON GARDEN OF EDEN NO. 3, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 81, RECORDS OF KING COUNTY AUDITOR, BASED ON FOUND SURVEY MARKERS, PER REFERENCE NO. 1.



VICINITY MAP
N7S



SURVEY NOTES

1. THE BEARING OF THAT PORTION OF THE PROPOSED SIDELINE BEGINNING AT THE WESTERLY EDGE OF THE OVERHEAD CANOPY AND TERMINATING AT THE WESTERLY LINE OF THE SECOND CLASS SHORELANDS IS BASED ON A PRORATION BETWEEN THE EXISTING NORTH AND SOUTH SIDELINES OF PROPERTY WITH PARCEL NO. 334330-2040. THIS METHOD IS BASED ON THE PRESUMPTION THAT SAID NORTH AND SOUTH SIDELINES ARE AN EXTENSION OF THE PROPERTY LINES.
2. THE MIDDLE OF THE COMMON FENCE LINE HAS BEEN USED AS THE NEW BOUNDARY.
3. THE PURPOSE OF THIS SURVEY IS TO SHOW THE COURT ORDERED PROPERTY LINE COMMON TO THE SUBJECT PARCELS, AS STATED IN SMITH VS. PETERSON, KING COUNTY SUPERIOR COURT CAUSE NO. 08-2-22760-2 SEA, FOR INFORMATION PERTAINING TO THE ORIGINAL DETERMINATION OF THE PARCEL BOUNDARIES BY THE SURVEYOR. PRIOR TO SAID COURT ORDER, SEE RECORD OF SURVEY, RECORDED JULY 23, 2006, UNDER RECORDING NO. 20060729000001, RECORDS OF KING COUNTY, WASHINGTON.
4. FOR THIS PLAT, PER REFERENCE 1, THE LOT LINES EXTENDING INTO LAKE WASHINGTON WERE NOT PERPENDICULAR BUT PARALLEL TO, OR PROPORTIONED TO THE NORTH OR SOUTH BLOCK LINES FROM THE ORIGINAL PLAT.

REFERENCES

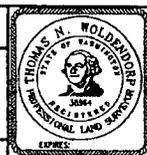
1. UNRECORDED SURVEY PREPARED BY BEN V. PETERSEN, PLS OF PLS, INC. FOR LARRY PETERSON, WITH JOB NO. 8049, DATED MARCH 25, 2010.

LINE	BEARING	DISTANCE
1	N87°47'16"E	121.09'
2	N84°22'49"E	62.78'
3	N85°11'48"E	49.13'
4	N88°33'00"W	121.09'
5	N84°22'49"E	62.78'
6	N88°33'00"W	61.50'
7	N85°10'54"E	11.00'
8	N86°18'19"E	10.47'
9	N85°10'54"E	7.46'
10	N86°18'19"E	32.97'
11	N85°10'54"E	12.88'

RECORDER'S CERTIFICATE
FILED FOR RECORD THIS _____ DAY OF _____
2010 AT _____ M IN BOOK _____ OF SURVEYS, PAGE _____
AT THE REQUEST OF SITE SURVEY & MAPPING, INC.
MANAGER _____ SUPT. OF RECORDS _____

SURVEYOR'S CERTIFICATE
THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF GREGG SMITH IN APRIL, 2010.
CERTIFICATE NO.: 36964

RECORD OF SURVEY
GREGG SMITH
6208 HAZELWOOD LANE SE
BELLEVUE, WA
© 2010, SITE SURVEY & MAPPING, INC., ALL RIGHTS RESERVED



PROJECT#: 10-090 SHEET: 1 OF 1
SE 1/4, SW 1/4, SEC 20, TWP 24N, RNG 6E, W.M.

Site
Survey & Mapping, Inc.
www.siteandsurvey.com 4808 Aljan Glow Place NW Issaquah WA 98027 Phone: 425.844.2078

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

GREGG SMITH and KELLY SMITH,
husband and wife,

Plaintiffs,

v.

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

Defendants.

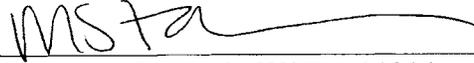
No. 08-2-22750-2 SEA

**ELECTRONIC
TRANSMISSION AFFIDAVIT
RE: DECLARATION OF
THOMAS WOLDENDORP**

I, Melody Staubitz, declare under penalty of perjury under the laws of the State of Washington, that the electronic document titled Declaration of Thomas N. Woldendorp consisting of 10 pages, is a complete and legible electronic transmission that I have examined personally and that was received by me via email at Melody@loccc.com.

Dated this 11th day of August, 2010.

LAW OFFICE OF CATHERINE C. CLARK PLLC



Catherine C. Clark, WSBA 21231
Melody Staubitz WSBA 40871
Attorneys for Plaintiffs Gregg and Kelly Smith

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Appendix 21Ben Petersen Testimony Excerpt

1 THE COURT: Naturally.

2 Q. (By Mr. Watts) You and Cramer agree that the preferable
3 method, based on Exhibit 1 and Exhibit 60, is the
4 proration, correct?

5 A. That's correct. Yes.

6 Q. And in your professional surveying standards, is your map,
7 Exhibit 60, an accurate depiction of the north line on the
8 Peterson property?

9 A. Yes, it is.

10 MR. WATTS: That's all I have.

11

12 C R O S S - E X A M I N A T I O N

13 BY MS. CLARK:

14 Q. Mr. Petersen, my name is Catherine Clark.

15 A. Hi.

16 Q. I am the counsel for the defendants, Mr. and Mrs. Smith.
17 And in preparation for a survey, do you look at the deeds
18 to the property?

19 A. Yes.

20 Q. In your research -- and did you research the King County
21 public records to find those deeds?

22 A. Yes.

23 Q. In your research, did you find a deed or court order or
24 any other document that affirms your view of the common
25 boundary between the Smith and Peterson property?

1 A. No, I can't say we did.

2 Q. So at this point, there is no court order or deed that
3 exists, in your mind, that declares your line to be the
4 common boundary?

5 A. No, not that I know of.

6 Q. When we prorate -- excuse me. You've stated on the page 1
7 of Exhibit 60 a surveyor's narrative?

8 A. Yes.

9 Q. And we can use either Exhibit 2 or just use the big copy.
10 It's the same thing. What is the purpose of a surveyor's
11 narrative?

12 A. Most commonly, it's for other surveyors to explain our
13 methodology for determining the boundaries.

14 Q. Does every survey have a surveyor's narrative on it?

15 A. No.

16 Q. And why not?

17 A. It's not required by law. It's an optional item that
18 we -- we particularly do. It is law in several other
19 states, but not here.

20 Q. And why did you choose to put it in this particular survey
21 at Exhibit 60?

22 A. We felt that our measurements and our methodology -- we
23 wanted to make clear how we determined this -- these
24 property lines.

25 Q. So would you say that prorating property lines is a

1 mathematical calculation?

2 A. It is.

3 Q. Okay. Does prorating property lines take in the
4 improvements on the ground --

5 A. No.

6 Q. -- in that mathematical calculation?

7 A. No.

8 Q. Okay. Does it take in the lines of occupation in that
9 mathematical calculation?

10 A. No.

11 Q. Okay. Did you consider the lines of occupation when you
12 made this mathematical calculation in Exhibit 60?

13 A. No, not normally. Normally, we determine the deed lines
14 and then show the occupation.

15 Q. So --

16 THE COURT: Show the deed lines and then -- no wait.

17 What did you say? You --

18 THE WITNESS: We -- we determine the deed lines --

19 THE COURT: Determine. And then show --

20 THE WITNESS: And then --

21 THE COURT: -- the occupation.

22 THE WITNESS: -- graphically show the difference, if
23 there is a difference, between them -- between those deed
24 lines and the occupation lines or evidence of the
25 occupation.

1 Q. (By Ms. Clark) Where are the deed lines shown on
2 Exhibit 60?

3 A. This one here, 60?

4 Q. Yes. The one that you drew.

5 A. They're the darker lines.

6 Q. The darker lines. So I just want to make sure I
7 understand your testimony. You testified earlier that the
8 line -- the dark line between the Smith property and
9 the Heath property, is that not a prorated line?

10 A. Yes, it is.

11 THE COURT: You misspoke. The Smith and the Peterson.

12 MS. CLARK: I'm sorry. I apologize.

13 Q. (By Ms. Clark) I mean, so that's a prorated line?

14 A. Yes.

15 Q. In what deed is that document or that line reflected?

16 A. What deed?

17 Q. Do you know the deed where that line is reflected?

18 A. It -- no. We have the deeds for the properties.

19 Q. Okay.

20 A. So I guess it would be those.

21 Q. Could I have you turn to --

22 A. They're listed here.

23 Q. Yes. And I have them in the white notebook before you,
24 and I'm just digging through. I'm sorry. I'll have you
25 turn to Exhibit 16, please.

1 A. Here?

2 Q. Yes. Do you recognize that document?

3 A. I do not.

4 Q. Could you point out to me on Exhibit 60 where you identify
5 the deeds that you rely on?

6 A. I believe this match -- the legal description on Exhibit A
7 here --

8 Q. Okay.

9 A. -- matches the same one we have.

10 Q. All right. So -- and that leads me to my next few
11 questions.

12 MR. WATTS: Is this yours?

13 THE COURT: Yes, that's mine.

14 Q. (By Ms. Clark) So the face of the survey does not
15 actually refer to a particular recorded deed?

16 A. Yes, we do.

17 Q. Which document?

18 A. They're listed here on sheet 2 of 2 of Exhibit 60.

19 Q. I'm sorry. Could you say that again?

20 A. The legal descriptions for the properties are listed here
21 on page 2 of 2 of Exhibit 60.

22 Q. Okay. Is there a copy -- is a recording number from the
23 King County recorder's numbers stated on the face of
24 Exhibit 60?

25 A. Is the recording number?

1 Q. Yes.

2 A. No, I don't believe we did.

3 Q. Okay. Okay. So if you look at Exhibit 16, and page 2 of
4 Exhibit 16, which is page number 119, does that legal
5 description -- what is that the legal description for,
6 actually, on Exhibit 16?

7 A. Let's see. Well, assuming this is the Smith property --
8 is this the Smith property?

9 Q. The Smith property is the house to the south, and I will
10 represent to you the Smith property is the house to the
11 north and the Peterson is the house to the south.

12 A. Okay. That's what I thought. Yeah. It appears to be the
13 legal description for the Smith property.

14 Q. Okay. And so do you see any difference between the legal
15 description in Exhibit 16 for the Smith property and the
16 legal description offered on Exhibit 60 for the Smith
17 property as identified by parcel number Minor 2060?
18 Excuse me, 2030.

19 A. Well, let's see, since I've never seen this before. I
20 don't see any obvious difference.

21 Q. Okay. So then turning -- I think it's 52. Excuse me,
22 Exhibit 51.

23 THE COURT: I -- can I interrupt just for a second.

24 On page 2, I think you said, there is some reference to
25 a legal description? I mean, where is that on your -- I

1 mean, is it someplace here in the tiny print that I don't
2 know about, or is it someplace obvious that I --

3 THE WITNESS: I think you're looking at sheet 1.

4 THE COURT: Okay.

5 THE WITNESS: -- of 2.

6 THE COURT: I see. Okay. So this one?

7 THE WITNESS: This one, yeah.

8 THE COURT: And it is --

9 MS. CLARK: Oh --

10 THE COURT: So what's the legal description?

11 THE WITNESS: I think if you flip it around.

12 THE COURT: Is it here in the notes?

13 THE WITNESS: Yeah. Right -- right there. Legal
14 description.

15 THE COURT: Here?

16 THE WITNESS: Yeah.

17 THE COURT: This is the -- okay.

18 Q. (By Ms. Clark) So let me get -- understand what I
19 understand to be pages 1 and 2 of Exhibit 60. The one
20 with the graph is page 1 and the one with the map is
21 page 2?

22 A. Yes.

23 THE COURT: And it does say "1 of 1" and "2" --

24 MS. CLARK: Okay.

25 THE COURT: -- "of 2," just --

1 MS. CLARK: I just wanted to make sure I understand.

2 THE COURT: -- there was too much information.

3 THE WITNESS: And I think it's cut off.

4 Q. (By Ms. Clark) All right. So if you look at Exhibit 51,
5 please, Mr. Petersen, do you recognize that document?

6 A. Not offhand.

7 Q. I will represent to you that that is the statutory
8 warranty deed that vests the Peterson, and title to their
9 property. Does that seem like a fair representation?

10 A. It appears to match the legal description that we have,
11 yes.

12 Q. Okay. And so that is the legal description that you used
13 for the Peterson property in your survey in Exhibit 60?

14 A. Yes.

15 Q. Okay. Any -- does there show anywhere on Exhibit 51 or
16 Exhibit 16 that confirms your prorated line?

17 A. No. It wouldn't.

18 Q. So I want to make sure I understand your other -- some
19 other of your testimony. You said that the calculated
20 line is the line that would exist if the original plat
21 lines were followed in their original dimensions; is that
22 correct?

23 A. That's --

24 Q. Okay.

25 A. -- basically correct.

1 Q. And you did not show the calculated line on Exhibit 60?

2 A. No.

3 Q. Okay. Why did you choose not to do that?

4 A. We simply prorated, which is the proper method to use, and
5 showed that.

6 Q. Do you have any disagreements with Mr. Hille of the Cramer
7 company, at Exhibit 1 back in your white notebook,
8 calculation or representation of the calculated line?

9 MR. WATTS: Disagreement meaning professionally or
10 mathematically?

11 Q. (By Ms. Clark) Any disagreements. And if you go to
12 page 2, it's blown up a little bit bigger.

13 A. No, that's probably where we would probably calculate that
14 line if we had elected to show it.

15 Q. Okay.

16 MS. CLARK: I'd like to admit Exhibit 1, then,
17 Your Honor, based on Mr. Petersen's testimony.

18 MR. WATTS: How can he establish the foundation for
19 somebody else's survey?

20 MS. CLARK: He just said he would do it.

21 THE COURT: He agrees with the line. That's fine.

22 (Exhibit No. 1 admitted.)

23 Q. (By Ms. Clark) Okay. So the calculated line, then, shown
24 in the Hille/Cramer survey is what the deed lines show
25 from the deeds that are recorded at Exhibit 16 and

1 Exhibit 51, correct?

2 A. No.

3 Q. No. Why is that?

4 A. There simply isn't enough distance here in this block.

5 The deed line is the dark line that we're showing and also
6 Cramer is showing.

7 Q. But you just testified that the deed line is the dark
8 line, is a prorated mathematical line that you used
9 applying a rule of proration, did you not?

10 A. Could you repeat that?

11 Q. Did you not just testify that the dark line is a prorated
12 line that you calculated as a mathematical function using
13 the rule of proration, correct?

14 A. That's correct.

15 Q. So where is the deed line then reflected without using the
16 rule of proration either in the Cramer survey or in
17 Exhibit 60?

18 A. It's probably fairly close to where the Cramer shows
19 the -- the dashed line.

20 Q. So that would be the deed line. Would that also be the
21 platted line as shown in -- and I love the name of this
22 plat -- the Lake Washington --

23 THE COURT: The Garden of Eden.

24 Q. (By Ms. Clark) -- Garden of Eden plat?

25 A. Um-hum.

1 Q. Did you review the Garden of Eden plat?

2 A. Yes, we did.

3 THE COURT: And remember, she talked about snakes --

4 MS. CLARK: Yes.

5 THE COURT: -- just yesterday.

6 MS. CLARK: Indeed, there are --

7 THE COURT: Okay. Now --

8 MS. CLARK: It is absolutely an Eden down there.

9 THE COURT: It's all coming together for me now.

10 MS. CLARK: I ride my bike down there frequently.

11 MR. WATTS: We all know what happened in the Garden of
12 Eden, don't we.

13 THE COURT: We think we know.

14 MR. WATTS: That's right.

15 THE COURT: We've heard the story.

16 May I interrupt with a question?

17 MS. CLARK: Certainly, Your Honor.

18 THE COURT: Has the proration convention always been
19 the standard of the industry?

20 THE WITNESS: Yes.

21 THE COURT: Or is that something that has changed in 20
22 years or 30 years? I mean, because, again, if you -- one
23 can see that it would be confusing.

24 THE WITNESS: No, I understand that it's confusing.

25 But it -- it has been the standard for probably several

1 hundred years and has been upheld by the courts, according
2 to my -- my textbooks, so... There is no other way to do
3 it.

4 Q. (By Ms. Clark) Are there exceptions to the prorated line?

5 A. Yes.

6 Q. What are those exceptions?

7 A. The -- the rare exceptions are in cases where there's a
8 combination of platted lots and not platted lots meets and
9 bounds descriptions in a -- in a particular block.

10 Q. Are you familiar with an exception known as the rule of
11 apportionment -- or excuse me, rule of possession?

12 A. No.

13 Q. You're not familiar with the case of Reitz v. Knight in
14 the state of Washington?

15 A. I can't say that I am, no.

16 MS. CLARK: No further questions, Your Honor.

17

18 R E D I R E C T E X A M I N A T I O N

19 BY MR. WATTS:

20 Q. Mr. Petersen, first of all, you're not related to Larry
21 and Susan Peterson?

22 A. No, we're not.

23 Q. Let's get that straight.

24 A. No, I'm an "s-e-n."

25 Q. Second, secondly, if you use the dashed line on Exhibit 1,