



2150700197

Page: 1 of 26
7/02/2015 9:08 AM
ORD \$97.00
Whatcom County, WA

Request of: BELLINGHAM CITY OF

AFTER RECORDING RETURN DOCUMENT TO:
City of Bellingham – Public Works, Engineering
210 Lottie Street
Bellingham, WA 98225

DOCUMENT TITLE:

ORDINANCE TO VACATE STREET

GRANTOR(S):

CITY OF BELLINGHAM

GRANTEE(S):

PUBLIC

ABBREVIATED LEGAL DESCRIPTION:

**PORTION OF ALLEY BETWEEN SAMISH WAY AND 37TH STREET,
ABUTTING LOTS 3 THROUGH 10 OF BLOCK 1, AND LOTS 1 THROUGH 10,
BLOCK 2, ALL IN ALLEN AND SWARTOUTS ADD TO SEHOME (FOR
COMPLETE LEGAL DESCRIPTION SEE PAGE 2, ALL SITUATED IN
WHATCOM COUNTY, WASHINGTON**

ASSESSORS PARCEL NUMBERS:

380331 441098 0000, 380331 442120 0000, 380331 452122 0000, & 380331 454128 0000

Ord # 2015-06-023

AFTER RECORDING RETURN DOCUMENT TO:

City of Bellingham - Planning Department
210 Lottie Street
Bellingham, WA 98225

Reserved for Recording Purposes Only

DOCUMENT TITLE: *Street Vacation Ordinance*

REFERENCE NUMBER OF RELATED DOCUMENT: VAC2014-00002

GRANTORS: *City of Bellingham*

GRANTEES: *CAP Bellingham LLC, CAP Bellingham II LLC, and Clarence A. Johnson Family Limited Partnership*

ASSESSOR'S TAX/PARCEL NUMBER(S): *380331 441098, 442120, 452122, and 454128*

ABBREVIATED LEGAL DESCRIPTION: *That half of the alley abutting Lots 3-10 of Block 1 and 1-10 Block 2, Allen and Swartout's Add to Sehome.*

ORDINANCE NO. 2015-06-023

AN ORDINANCE RELATING TO THE VACATION OF A PORTION OF THE ALLEY BETWEEN SAMISH WAY AND 37th STREET, SOUTH OF CONSOLIDATION AVENUE AS SHOWN IN ATTACHMENT 1

WHEREAS, the City's Technical Review Committee considered and recommended approval of the petition to vacate the subject right-of-way as shown and described on Attachment 1, which is attached hereto and incorporated herein; and

WHEREAS, the Hearing Examiner has recommended approval of the subject vacation petition with the findings of fact and conclusions of law as attached hereto and incorporated herein as Attachment 2 and that the City Council adopts these findings of fact and conclusions of law, and;

WHEREAS, an appraisal was not required because there is proposed to be an equitable exchange of right-of-way with the total square footage of new right-of-way to be dedicated the same as or greater than with a portion of 37th Street, and

WHEREAS, petitioners CAP Bellingham LLC, CAP Bellingham II LLC have dedicated 3,501 square feet of right of way on the west side of 37th Street in compensation for the

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

vacation of 3,500 square feet of alley right of way between Samish Way and 37th Street south of Consolidation Avenue as shown in Attachment 3; and

WHEREAS, petitioner and Clarence A Johnson Family Limited Partnership has dedicated 1,000 square feet of right of way on the west side of 37th Street in compensation for the vacation of 1,000 square feet of alley right of way as shown in Attachment 4; and

WHEREAS, all the jurisdictional steps preliminary to the vacation have been taken as provided by law.

NOW THEREFORE,

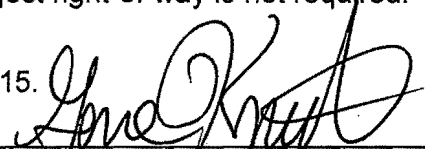
THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Upon dedication of compensatory right-of-way along the west side of 37th Street as shown by Attachments 3, and 4, the subject right-of-way as shown on Attachment 1 is hereby vacated and the Hearing Examiner Findings of Fact, Conclusions of Law and Recommendation (Attachment 2) is hereby incorporated herein and adopted.

Section 2. No damage shall result to any person or persons or to any property by reason of the vacation of said right-of-way.

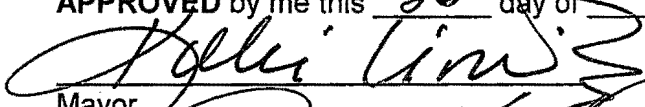
Section 3. Payment for the vacation of the subject right-of-way is not required.

PASSED by the Council this 15 day of June, 2015.

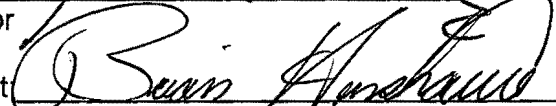


Council President

APPROVED by me this 25th day of June, 2015.



Mayor



Attest
Finance Director

Approved as to Form:



Office of the City Attorney

Published: June 19, 2015

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

VAC2014-00002

I CERTIFY that I know or have satisfactory evidence that **KELLI LINVILLE** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Mayor** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



6/25/15
DATED
Tracy Lewis
SIGNATURE OF NOTARY PUBLIC
Tracy Lewis
NAME PRINTED
Notary Public
TITLE
10/20/18
MY APPOINTMENT EXPIRES

STATE OF WASHINGTON)
COUNTY OF WHATCOM)ss

I CERTIFY that I know or have satisfactory evidence that **BRIAN HENSHAW** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Finance Director** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

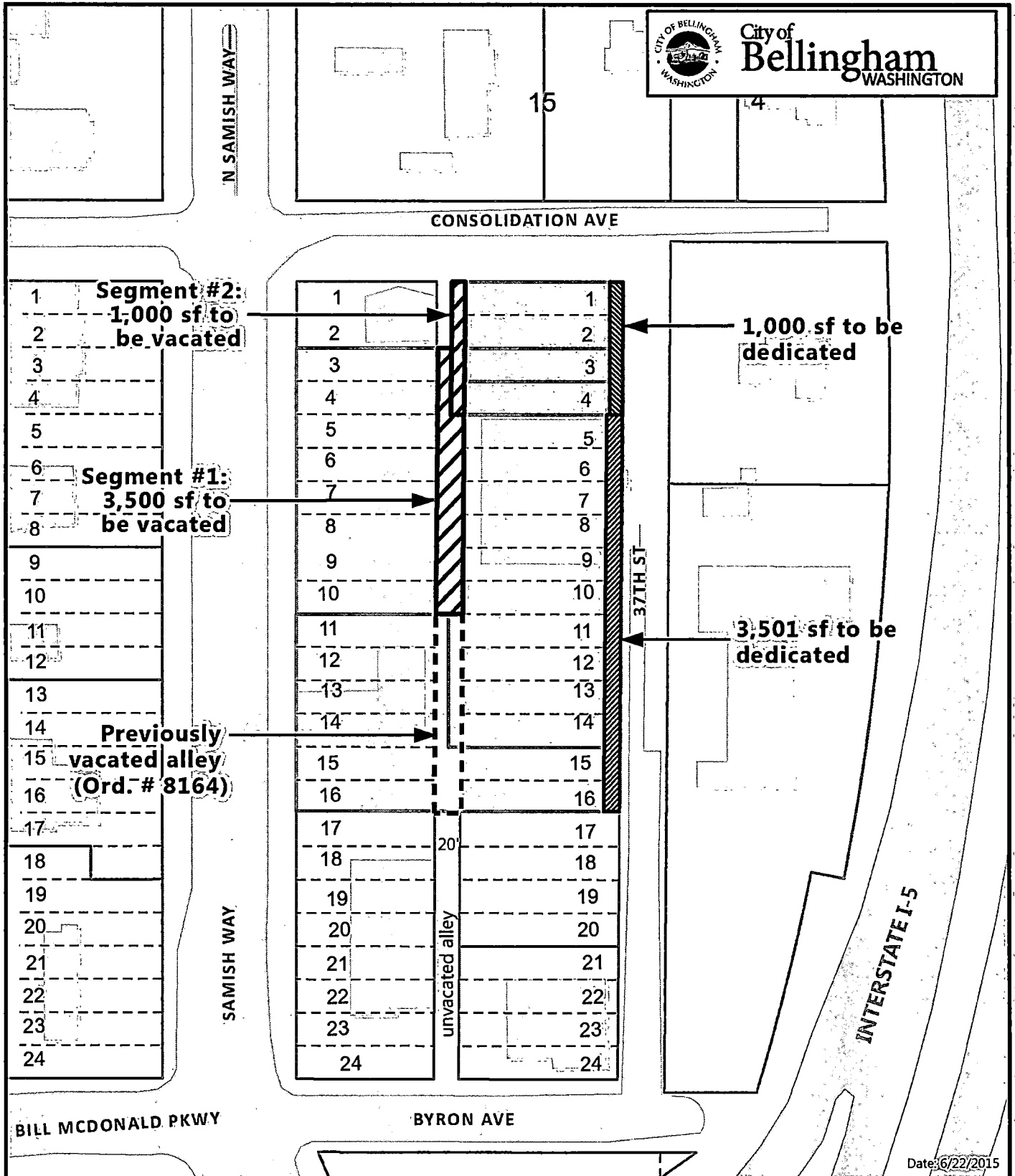


June 25, 2015
DATED
Heather Aven
SIGNATURE OF NOTARY PUBLIC
HEATHER AVEN
Name Printed
Notary Public
TITLE
March 9, 2016
MY APPOINTMENT EXPIRES

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270



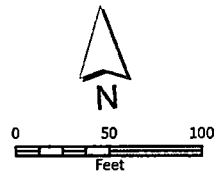
City of Bellingham WASHINGTON



Date: 6/22/2015

Legend:

- Lot Lines
- ▭ CAP Bellingham LLC & CAP Bellingham II LLC
- ▭ Parcels
- ▭ Clarence A Johnson Family LP



Attachment 2

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
29
30

THE HEARING EXAMINER OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON

<p>IN RE:</p> <p>C. Brody Glenn and John W. Heinemann, Petitioners Alley between Samish Way and 37th Street</p> <p>VAC2014-00002 / Vacation of 4,500 square feet of unopened alley</p>	<p>HE-14-PL040</p> <p>FINDINGS, CONCLUSIONS AND RECOMMENDATION</p> <p>SHARON A. RICE HEARING EXAMINER <i>PRO TEM</i></p>
--	--

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the City Council that the requested vacation of 4,500 square feet of unopened alley right-of-way between Samish Way and 37th Street south of Consolidation Avenue should be **APPROVED** subject to compensation as described herein.

SUMMARY OF RECORD

Request:

C. Brody Glenn and John W. Heinemann on behalf of Ernst Trust Washington LLC and Clarence A Johnson Family LP (Petitioners) requested vacation of a portion of an alley between Samish Way and 37th Street south of Consolidation Avenue.

Hearing Date:

The Bellingham Hearing Examiner conducted an open record hearing on the request on October 14, 2014.

Testimony:

At the hearing the following individuals presented testimony under oath:

- Jackie Lynch, Planner II
- Jason Tankersley, Petitioner's Representative

1 Christopher Price, Petitioner's Civil Engineer

2 **Exhibits:**

3 At the open record hearing, the following exhibits were admitted in the record:

4 Exhibit 1 Staff Report to the Examiner, dated October 14, 2014 with the following
5 attachments:

- 6 Attachment A Site and Vicinity Maps
- 7 1. Street Vacation Map
- 8 2. Vicinity Map
- 9 3. Allen and Swartout's Plat Map (Year 1889)

- 10 Attachment B Alley Vacation Petitions
- 11 1. David W. Glenn petition for Lots 5-10 Block 1 and Lots 5-10
- 12 Block 2, Allen and Swartout's Add to Sehome
- 13 2. Gary Johnson petition for Lots 1-4, Block 2, Allen and Swartout's
- 14 Add to Sehome

- 14 Attachment C Letters and Notices
- 15 1. 5/12/2014 Johnson Family Partnership letter
- 16 2. 8/19/2014 Utility Corridor Manager notice
- 17 3. 8/19/2014 Neighboring Owners notice
- 18 4. 8/27/2014 Heinemann notice
- 19 5. 9/2/2014 Heinemann reply
- 20 6. 9/11/2014 Utility Corridor Manager notice
- 21 7. 9/23/2014 Puget Sound Energy letter
- 22 8. 10/1/2014 TRC Recommendation letter to applicants

21 Attachment D Draft Ordinance

23 Upon consideration of the testimony and exhibits submitted, the Hearing Examiner
24 enters the following findings and conclusions:

25 **FINDINGS**

- 26 1. C. Brody Glenn and John W. Heinemann on behalf of Ernst Trust Washington
- 27 LLC and Clarence A Johnson Family LP (Petitioner) requested vacation of a
- 28 portion of an alley between Samish Way and 37th Street south of Consolidation
- 29
- 30

1 Avenue.¹ Proof of ownership accompanied the petitions and was confirmed via
2 the City of Bellingham's City IQ mapping system/the Whatcom County
3 Assessor's Office. In compensation, the Petitioner proposed to dedicate the
4 same or larger area along the west side of 37th Street adjacent the petitioner's
5 properties, widening 37th Street. *Exhibit 1, pages 1-2, 9; Exhibit 1, Attachments
B1 and B2.*

6 2. The Samish Way/37th Street alley between Consolidation Avenue and Byron
7 Avenue was created by the plat of Allen and Swartout's Addition to Sehome,
8 dated April 20, 1889, and deeded to the City of Sehome. Sehome later
9 consolidated with the City of Whatcom, which later merged with the city of
Fairhaven to become the City of Bellingham. *Exhibit 1, page 2.*

10 3. In November 2009, Ordinance 2009-11-069 approved the Samish Way Urban
11 Village Subarea Plan, which identifies 37th Street as a Type II street requiring 60
12 feet of right-of-way. Currently, 37th Street is 35 feet wide. *Exhibit 1, pages 2-3.*

13 4. The initial request for alley vacation was submitted May 2, 2014 by the Ernst
14 Trust Washington LLC, requesting vacation of the area identified as Segment #1
15 on Attachment A1. Subsequently on September 3, 2014 the Clarence A.
16 Johnson Family LP requested vacation of the area identified as Segment #2 on
17 Attachment A1. Vacation of this alley would consolidate properties in
18 preparation for development and would allow widening of 37th Street to improve
19 access to developable land. The proposed dedication would add ten to 11 feet of
width to 37th Street. *Exhibit 1, Attachments A1, B1 and B2; Exhibit 1, page 3;
Lynch Testimony.*

20 5. The Applicants requested that utility easements not be maintained. City
21 Planning Staff sent private utility providers notice of the Segment #1 vacation
22 petition on August 19, 2014 and of the Segment #2 petition on September 11,
23 2014. No utility notified the City of owning facilities within the subject alley
24 right-of-way or of having future need for facilities there. Blackrock Cable
25 informed Staff by telephone that they have no facilities nor any interest in
26 facilities in this alley. Puget Sound Energy provided a letter verifying that they
27 have no facilities in the alley. The City's Technical Review Committee (TRC)
determined that there is no need to maintain easements for utilities, as abutting
rights-of-way provide access to utilities. *Lynch Testimony; Exhibit 1,
Attachment C; Exhibit 1, page 9.*

28
29 ¹ The legal description of the property in question is that half of the alley abutting Lots 3-10 of Block 1
and 1-10 Block 2, Allen and Swartout's Add to Sehome. *Exhibit 1, page 1.*

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
29
30

6. The Capital facilities (CF) Element of the Bellingham Comprehensive Plan includes the following goal:

CFG-11: Provide and maintain adequate public facilities and service to meet the primary service needs of the city in a manner, which protects investments in existing facilities, maximizes the use of existing facilities, and promotes orderly compact urban growth.

Planning Staff asserted that the proposed vacation would not decrease the City's ability to provide utility or street access to private properties, but rather would enhance the City's ability to provide adequate public facilities and services, protect investments, maximize the use of existing facilities, and promote orderly compact urban growth by creating a more developable lot pattern in a designated Urban Village. *Exhibit 1, pages 3-4.*

7. The Petitioners have paid the application fee in the amount set by City Council resolution. The Planning and Community Development Director, as a member of the Technical Review Committee, determined that an appraisal of the proposed vacated right-of-way is not needed and that compensation in the form of dedication of the same area to be vacated (4,500 square feet) on 37th Street would be adequate. *Exhibit 1, page 4; see Exhibit 1, Attachment A1.*

8. The subject property does not abut any body of water and is not adjacent to nor does it lead to any park, open space, view, natural area, or any other natural or main-made attraction. *Exhibit 1, Attachment A2; Exhibit 1, pages 7-8.*

9. The proposed vacation would not land lock any parcels. All affected parcels also abut rights-of-way including Samish Way, Consolidation Avenue, and 37th Street. *Exhibit 1, page 8; Exhibit 1, Attachments A1 and A2.*

10. Petitions having been submitted by 90% of the abutters to the requested street vacation, the City Council set October 14, 2014 at 6:00 p.m. as the time for public hearing (Resolution No. 2014-31). Notice of the alley vacation public hearing was posted at three conspicuous places in the City of Bellingham and at three vehicular entrances near this area, as well as on the City's web page. Notice of hearing was provided verbally and in writing to 105 Samish Way (the owners of Lots 1-2, Block 1, Allen and Swartout's Add to Fairhaven) west of the north end of this vacation. In response, on October 6, 2014, the owners of 105 Samish Way applied to vacate their adjacent alley segment. The City received no public comment on the requested vacation and no opposition. *Exhibit 1, pages 4-5; Lynch Testimony.*

1 **CONCLUSIONS**

2 **Jurisdiction**

3 The Hearing Examiner is granted authority to hold hearings and make recommendations
4 to City Council on right-of-way vacation requests pursuant to RCW 35.79.030.

5 **Criteria for Review**

6 **City Vacation Regulations**

7 **BMC 13.48.010 - Hearing - Application Fee**

8 As a condition precedent to the city's consideration of a resolution setting a date for a
9 public hearing on the question of whether a city street should be vacated, the petitioner
10 therefor shall submit an application accompanied by a fee in the amount set by city
11 council resolution and the petitioner shall pay to the city an amount equal to the cost of
12 preparation of an appraisal of the area proposed to be vacated and the city shall order
13 such appraisal. An appraisal, and payment therefor, may not be required when, in the
14 judgment of the director of planning and community development, it is not needed to
15 determine the fair market value of the area to be vacated.

16 **BMC 13.48.020 Payment for vacation**

17 Unless otherwise specifically provided by the city council in the street vacation
18 ordinance, such ordinance shall provide for the payment of compensation by the
19 petitioner of an amount equal to one-half the appraised value of the area proposed for
20 vacation. The city council shall have final authority to determine the appraised value.
21 In no event shall such vacation request come before the city council for final
22 consideration until such amount has been computed, incorporated into the ordinance,
23 and deposited with the finance director. In the event that final passage of the ordinance
24 is not granted, the deposited amount (exclusive of the application fee and appraisal fee)
25 shall be refunded to the petitioner.

26 **State Street Vacation Requirements**

27 **RCW 35.79.010 Petition by owners — Fixing time for hearing.**

28 The owners of an interest in any real estate abutting upon any street or alley who may
29 desire to vacate the street or alley, or any part thereof, may petition the legislative
30 authority to make vacation, giving a description of the property to be vacated, or the
legislative authority may itself initiate by resolution such vacation procedure. The
petition or resolution shall be filed with the city or town clerk, and, if the petition is
signed by the owners of more than two-thirds of the property abutting upon the part of
such street or alley sought to be vacated, legislative authority by resolution shall fix a
time when the petition will be heard and determined by such authority or a committee
thereof, which time shall not be more than sixty days nor less than twenty days after the
date of the passage of such resolution.

1 RCW 35.79.020 Notice of hearing — Objections prior to hearing.

2 Upon the passage of the resolution the city or town clerk shall give twenty days' notice
3 of the pendency of the petition by a written notice posted in three of the most public
4 places in the city or town and a like notice in a conspicuous place on the street or alley
5 sought to be vacated. The said notice shall contain a statement that a petition has been
6 filed to vacate the street or alley described in the notice, together with a statement of the
7 time and place fixed for the hearing of the petition. In all cases where the proceeding is
8 initiated by resolution of the city or town council or similar legislative authority without
9 a petition having been signed by the owners of more than two-thirds of the property
10 abutting upon the part of the street or alley sought to be vacated, in addition to the
11 notice hereinabove required, there shall be given by mail at least fifteen days before the
12 date fixed for the hearing, a similar notice to the owners or reputed owners of all lots,
13 tracts or parcels of land or other property abutting upon any street or alley or any part
14 thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to
15 the address thereon shown: PROVIDED, That if fifty percent of the abutting property
16 owners file written objection to the proposed vacation with the clerk, prior to the time of
17 hearing, the city shall be prohibited from proceeding with the resolution.

13 RCW 35.79.030 Hearing — Ordinance of vacation.

14 The hearing on such petition may be held before the legislative authority, before a
15 committee thereof, or before a hearing examiner, upon the date fixed by resolution or at
16 the time the hearing may be adjourned to. If the hearing is before a committee the same
17 shall, following the hearing, report its recommendation on the petition to the legislative
18 authority which may adopt or reject the recommendation. If the hearing is held before a
19 committee it shall not be necessary to hold a hearing on the petition before the
20 legislative authority. If the hearing is before a hearing examiner, the hearing examiner
21 shall, following the hearing, report its recommendation on the petition to the legislative
22 authority, which may adopt or reject the recommendation: PROVIDED, That the
23 hearing examiner must include in its report to the legislative authority an explanation of
24 the facts and reasoning underlying a recommendation to deny a petition. If a hearing is
25 held before a hearing examiner, it shall not be necessary to hold a hearing on the
26 petition before the legislative authority. (emphasis added)

24 If the legislative authority determines to grant the petition or any part thereof, such city
25 or town shall be authorized and have authority by ordinance to vacate such street, or
26 alley, or any part thereof, and the ordinance may provide that it shall not become
27 effective until the owners of property abutting upon the street or alley, or part thereof so
28 vacated, shall compensate such city or town in an amount which does not exceed one-
29 half the appraised value of the area so vacated. If the street or alley has been part of a
30 dedicated public right of way for twenty-five years or more, or if the subject property or
portions thereof were acquired at public expense, the city or town may require the

1 owners of the property abutting the street or alley to compensate the city or town in an
2 amount that does not exceed the full appraised value of the area vacated. The ordinance
3 may provide that the city retain an easement or the right to exercise and grant easements
4 in respect to the vacated land for the construction, repair, and maintenance of public
5 utilities and services. A certified copy of such ordinance shall be recorded by the clerk
6 of the legislative authority and in the office of the auditor of the county in which the
7 vacated land is located. One-half of the revenue received by the city or town as
8 compensation for the area vacated must be dedicated to the acquisition, improvement,
9 development, and related maintenance of public open space or transportation capital
10 projects within the city or town.

11 RCW 35.79.035 Limitations on vacations of streets abutting bodies of water —
12 Procedure.

- 13 1) A city or town shall not vacate a street or alley if any portion of the street or alley
14 abuts a body of fresh or salt water unless:
- 15 a) The vacation is sought to enable the city or town to acquire the property for port
16 purposes, beach or water access purposes, boat moorage or launching sites, park,
17 public view, recreation, or educational purposes, or other public uses;
 - 18 b) The city or town, by resolution of its legislative authority, declares that the street
19 or alley is not presently being used as a street or alley and that the street or alley
20 is not suitable for any of the following purposes: Port, beach or water access,
21 boat moorage, launching sites, park, public view, recreation, or education; or
 - 22 c) The vacation is sought to enable a city or town to implement a plan, adopted by
23 resolution or ordinance, that provides comparable or improved public access to
24 the same shoreline area to which the streets or alleys sought to be vacated abut,
25 had the properties included in the plan not been vacated.
- 26 2) Before adopting a resolution vacating a street or alley under subsection (1)(b) of this
27 section, the city or town shall:
- 28 a) Compile an inventory of all rights-of-way within the city or town that abut the
29 same body of water that is abutted by the street or alley sought to be vacated;
 - 30 b) Conduct a study to determine if the street or alley to be vacated is suitable for
use by the city or town for any of the following purposes: Port, boat moorage,
launching sites, beach or water access, park, public view, recreation, or
education;
 - c) Hold a public hearing on the proposed vacation in the manner required by this
chapter, where in addition to the normal requirements for publishing notice,
notice of the public hearing is posted conspicuously on the street or alley sought
to be vacated, which posted notice indicates that the area is public access, it is
proposed to be vacated, and that anyone objecting to the proposed vacation

- 1 should attend the public hearing or send a letter to a particular official indicating
2 his or her objection; and
3 d) Make a finding that the street or alley sought to be vacated is not suitable for any
4 of the purposes listed under (b) of this subsection, and that the vacation is in the
5 public interest.
6
7 3) No vacation shall be effective until the fair market value has been paid for the street
8 or alley that is vacated. Moneys received from the vacation may be used by the city
9 or town only for acquiring additional beach or water access, acquiring additional
10 public view sites to a body of water, or acquiring additional moorage or launching
11 sites.

12 RCW 35.79.040 Title to vacated street or alley.

13 If any street or alley in any city or town is vacated by the city or town council, the
14 property within the limits so vacated shall belong to the abutting property owners, one-
15 half to each.

16 RCW 35.79.050 Vested rights not affected.

17 No vested rights shall be affected by the provisions of this chapter.

18 *Adopted Bellingham City Council Vacation Policies*

19 It is the policy of the City of Bellingham to grant vacation of street right of ways when
20 it is determined that such right of way is not needed presently or in the future for public
21 access including vehicular, pedestrian, and visual access.

- 22 1. The right of way must be determined to be of no value to the circulation plan of the
23 City either now or in the foreseeable future. The circulation plan is assumed to
24 include vehicular, pedestrian, or other modes of transportation.
25
26 2. No vacation will be allowed if such action land locks any existing parcel, lot of
27 record, or tract. Access to a right of way of less than 30 feet in width does not
28 constitute adequate access. One ownership of all the lots on a right of way does not
29 circumvent this policy and in this it will be necessary to vacate lots prior or together
30 with the vacation action.
31
32 3. State law (R.C.W. 35.79). "No city or town shall be authorized to have authority to
33 vacate such street, or alley, or any parts thereof if any portion thereof abuts on a
34 body of salt or fresh water unless such vacation be sought to enable the city, town,
35 port district, or state to acquire the property for port purposes, boat moorage, or
36 launching sites, park, viewpoint, recreational, or educational purposes, or other
37 public uses. This provision shall not apply to industrial zoned property".

- 1 4. Right of way adjacent or leading to any park, open space, view, natural area, or any
2 other natural or man-made attraction should not be vacated.
- 3 5. The proposed vacation should be determined to be necessary to the public good
4 either in terms of needed development or when such vacation will result in a better
5 or more desirable situation. In some instances a more desirable situation may be a
6 better road pattern in terms of safety, or when an exorbitant amount of land is
7 devoted to unneeded right of way.
- 8 6. Notification of street vacation requests will be sent to the Hearing Examiner. The
9 Examiner will schedule review. The Examiner will hold a public hearing and make
10 recommendations to the City Council. The City Council makes the final decision.
- 11 7. The petition should contain the approval of all the abutting property owners and
12 proof of ownership must accompany the petition.
- 13 8. Vacation is not mandatory even though 100% of the abutting owners request the
14 vacation. (100% submittal)
- 15 9. Proposed or possible use of the vacated right of way is not relevant to City action
16 (court opinion).
- 17 10. Easements for utilities will be retained as a matter of procedure unless such
18 easement is specifically requested by the petitioners and approved by the City
19 Engineer.

20 **Conclusions Based on Findings**

- 21 1. All procedural requirements for signatures, notices, Technical Review
22 Committee review and recommendation, and hearing for the proposed vacation
23 have been satisfied. The appraisal requirement has been waived in accordance
24 with BMC 13.48. *Findings 1, 4, 7, and 10.*
- 25 2. The proposed vacation is not prohibited by RCW 35.79. The affected alley does
26 not abut a body of water. The request is supported by all of the abutting
27 property owners. *Findings 8 and 10.*
- 28 3. The proposed vacation is consistent with the City Council's Vacation Policies.
29 The affected alley is not needed for circulation, for utilities, or for access to park
30 or public attraction. No parcels would be land locked by approval. Approval
would provide a public benefit by facilitating development of the abutting

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
29
30

property and would, as proposed, result in dedication of 10 or more feet of additional right-of-way on 37th Street, which is substandard, promoting implementation of the Samish Way Urban Village Subarea Plan. *Findings 3, 4, 5, 6, and 8.*


- 4. Although no appraisal was required, it is for the City Council to determine whether, and what amount of, monetary compensation is required for a street vacation. The proposal would compensate the vacation by dedicating new right-of-way on 37th Street, which is currently substandard. The TRC recommended approval of the dedication in lieu of payment scheme. *Findings 3 and 7.*

RECOMMENDATION

Based upon the preceding findings and conclusions, the requested vacation of 4,500 square feet of unopened alley right-of-way between Samish Way and 37th Street, south of Consolidation Avenue, **SHOULD BE APPROVED** subject to dedication of the corresponding amount of right-of-way adjacent to 37th Street .

RECOMMENDED October 20, 2014.

BELLINGHAM HEARING EXAMINER

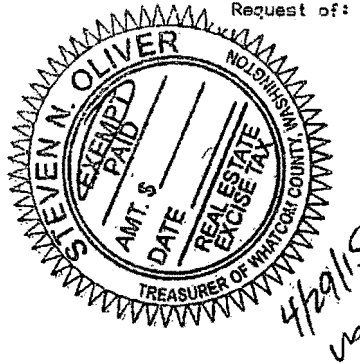


Sharon A. Rice, *Pro Tem*



Request of: BELLINGHAM CITY OF

AFTER RECORDING RETURN TO:
City of Bellingham -PW/Engineering
210 Lollie Street
Bellingham, WA 98225



DOCUMENT TITLE: **RIGHT OF WAY DEED OF DEDICATION**
GRANTOR(S): **CAP BELLINGHAM LLC and CAP BELLINGHAM II LLC**
GRANTEE(S): **CITY OF BELLINGHAM**
ABBREVIATED LEGAL DESCRIPTION: **PTN OF LOTS 5 THROUGH 16, BLOCK 2, ALLEN AND SWARTOUT'S ADDITION TO SEHOME (FOR COMPLETE LEGAL DESCRIPTION SEE PAGE 5, EXHIBIT A)**
ASSESSOR'S TAX/PARCEL NUMBER(S): **380331 441098 0000, 380331 442120 0000**
E5-SOL

CAP BELLINGHAM LLC and CAP BELLINGHAM II LLC, South Carolina limited liability companies, ("Grantors"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby dedicate to the City of Bellingham, a municipal corporation of the State of Washington ("Grantee"), the real property described on Exhibit A attached hereto and incorporated by this reference, and shown on the drawing attached hereto as Exhibit B and incorporated herein by this reference, for Grantee's full use as street right-of-way and attendant uses, which shall include an easement for the placement of utilities within said right-of-way.

In addition to the foregoing, for the same consideration, Grantor does further dedicate and grant to Grantee an easement over the adjoining land subject to this deed, an easement dedication that is necessary for the construction and maintenance of standard slopes to protect and support the roadway, embankments and other appurtenances according to the standards set forth in BMC 13.04.

Grantor hereby warrants that it has the right and authority to dedicate said right of way, utility easement and slope easement and binds itself, its successors and assigns forever to warrant and defend the right and title to the above-described right of way and easements unto the Grantee, its successors and assigns against the claims of all persons whomever. Grantor hereby waives for itself, its successors and assigns all rights to any further compensation or claim to damages on account of the construction or maintenance of said roadway as herein agreed.

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal this the 16th day of April, 2015.

GRANTORS:

CAP Bellingham, LLC, a South Carolina
limited liability company

By: Centennial American Real Estate, Ltd.
its: Manager

By: Carrie F. Buchanan

Carrie F Buchanan
Name

Secretary/Treasurer
Title

II
CAP Bellingham, LLC, a South Carolina
limited liability company

By: Centennial American Real Estate, Ltd.
its: Manager

By: Carrie F. Buchanan

Carrie F Buchanan
Name

Secretary/Treasurer
Title

EXHIBIT A

STREET DEDICATION

THE EAST 11.67 FEET OF LOTS 5 THROUGH 16 OF BLOCK 2, ALLEN AND SWARTOUT'S ADDITION TO SEHOME, WASHINGTON, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 3, RECORDS OF SAID COUNTY;

SITUATE IN WHATCOM COUNTY, WASHINGTON.



3/10/15

EXHIBIT B CONSOLIDATION AVE

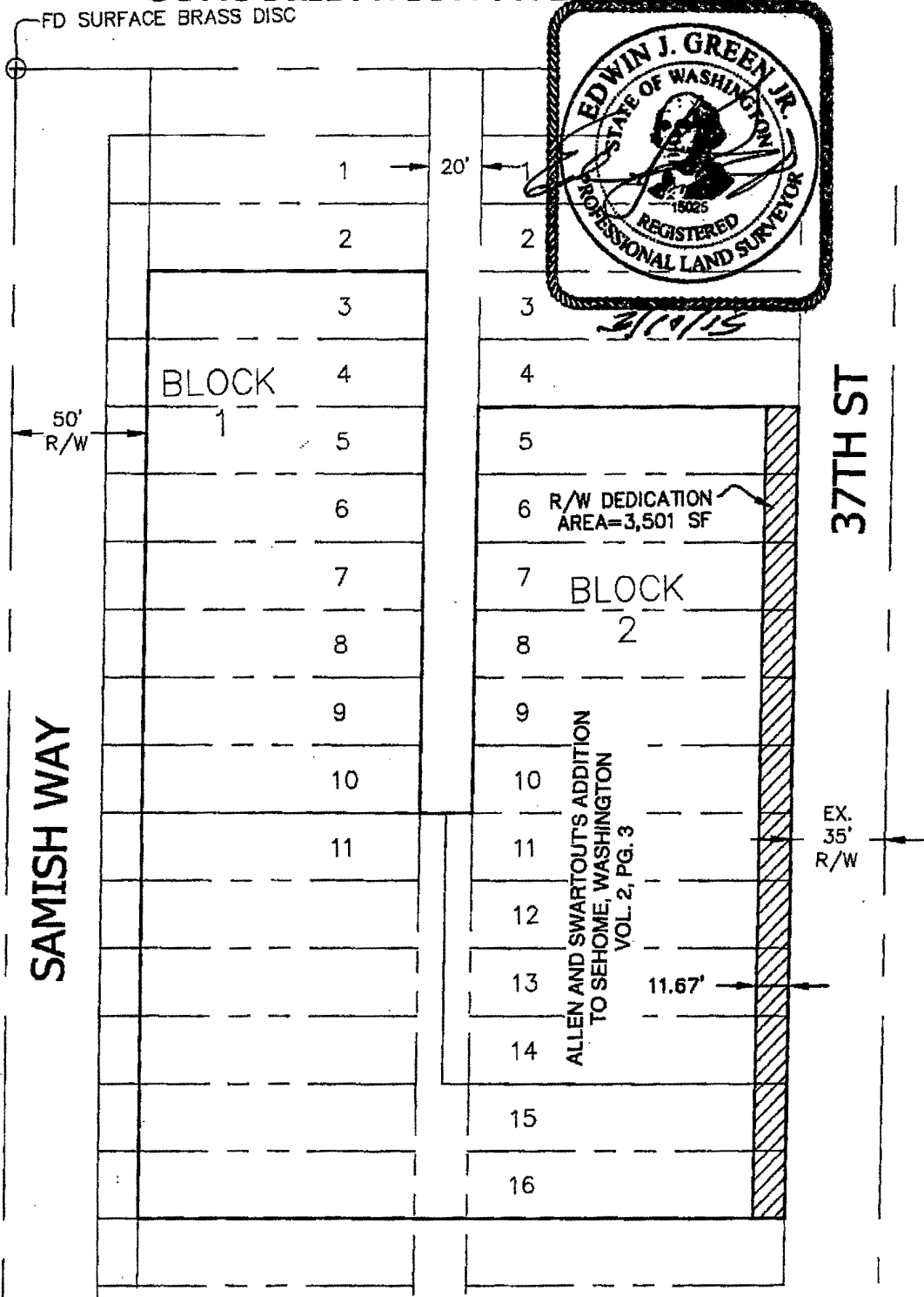
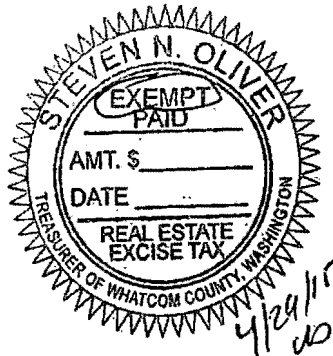


EXHIBIT SCALE: 1" = 60'



AFTER RECORDING RETURN TO:
City of Bellingham – PW/Engineering
210 Lottie Street
Bellingham, WA 98225



DOCUMENT TITLE: **RIGHT OF WAY DEED OF DEDICATION**
GRANTOR(S): **CLARENCE A JOHNSON FAMILY LIMITED PARTNERSHIP**
GRANTEE(S): **CITY OF BELLINGHAM**
ABBREVIATED LEGAL DESCRIPTION: **PORTION OF LOTS 1 THROUGH 4, BLOCK 2, ALLEN AND SWARTOUT'S ADDITION TO SEHOME (FOR COMPLETE LEGAL DESCRIPTION SEE PAGE 4, EXHIBIT A)**
ASSESSOR'S TAX/PARCEL NUMBER(S): **380331 454128 0000, 380331 452122 0000 ES-506**

RIGHT OF WAY DEED OF DEDICATION

CLARENCE A. JOHNSON FAMILY LIMITED PARTNERSHIP, a Washington State limited partnership, ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby dedicate to the City of Bellingham, a municipal corporation of the State of Washington ("Grantee"), the real property described on Exhibit A attached hereto and incorporated by this reference, and shown on the drawing attached hereto as Exhibit B and incorporated herein by this reference, for Grantee's full use as street right-of-way and attendant uses, which shall include an easement for the placement of utilities within said right-of-way.

In addition to the foregoing, for the same consideration, Grantor does further dedicate and grant to Grantee an easement over the adjoining land subject to this deed, an easement dedication that is necessary for the construction and maintenance of standard slopes to protect and support the roadway, embankments and other appurtenances according to the standards set forth in BMC 13.04.

Grantor hereby warrants that it has the right and authority to dedicate said right of way, utility easement and slope easement and binds itself, its successors and assigns forever to warrant and defend the right and title to the above-described right of way and easements unto the Grantee, its successors and assigns against the claims of all persons whomever. Grantor hereby waives for itself, its successors and assigns all rights to any further compensation or claim to damages on account of the construction or maintenance of said roadway as herein agreed.

10/10/15

IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal this the 10th
day of ~~May~~ April, 2015.

[Handwritten initials]

GRANTOR:

CLARENCE A. JOHNSON FAMILY LIMITED
PARTNERSHIP, a Washington State limited
partnership

By: *[Handwritten signature]*

GARY JOHNSON
Name

general Partner
Title

STATE OF WASHINGTON)
) ss
COUNTY OF Whatcom)

I CERTIFY that I know or have satisfactory evidence that GARY Johnson signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the general Partner of the CLARENCE A. JOHNSON FAMILY LIMITED PARTNERSHIP, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



4.10.2015
DATED

Shawna Frolich
SIGNATURE OF NOTARY PUBLIC

Shawna Frolich
NAME PRINTED

03-20-2017
MY APPOINTMENT EXPIRES

Exhib. 4 A

STREET DEDICATION AREA:

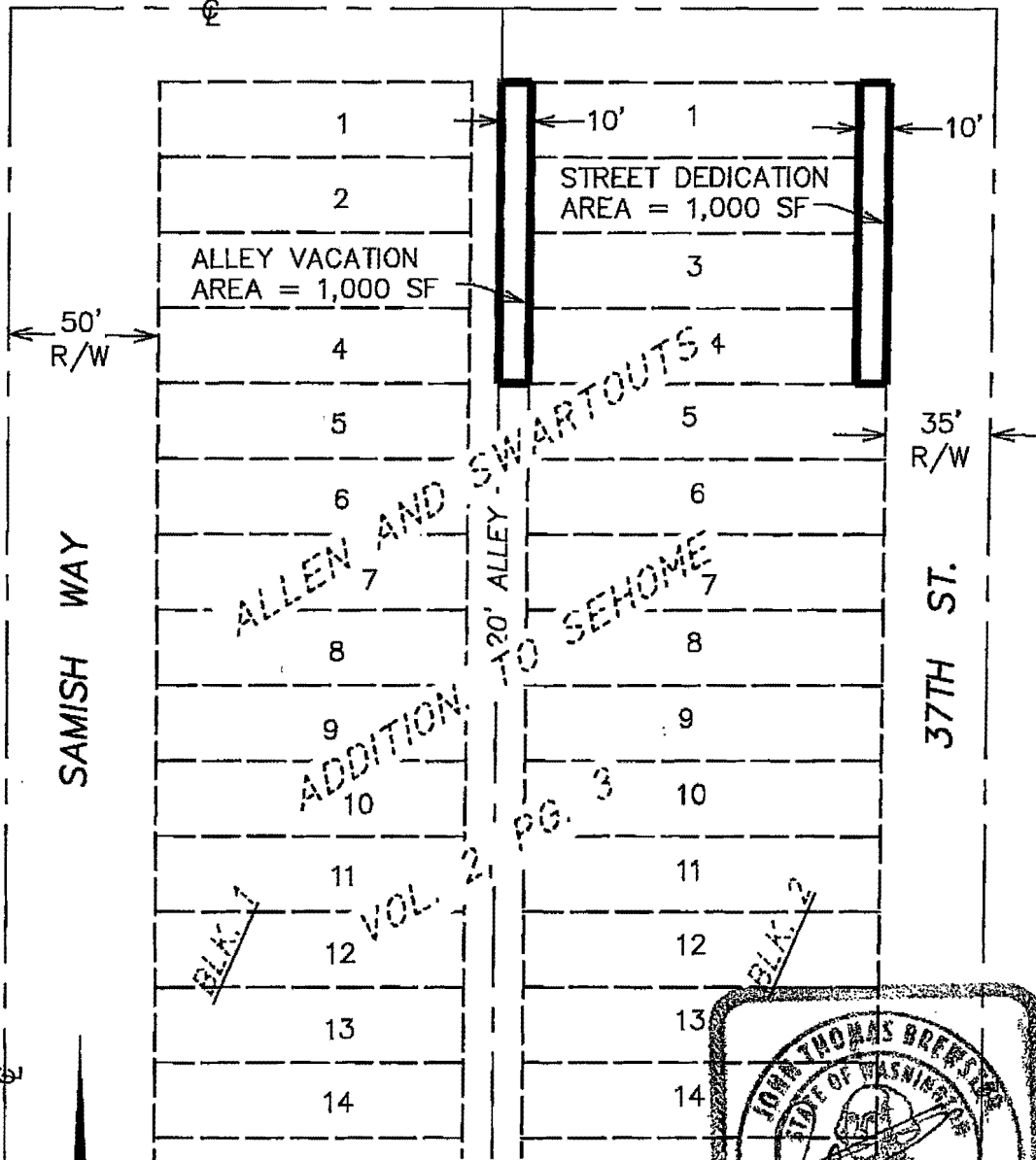
THE EAST 10.00 FEET OF LOTS 1 THROUGH 4 OF BLOCK 2, ALLEN AND SWARTOUTS ADDITION TO SEHOME, WASHINGTON, NOW A PART OF THE CONSOLIDATED CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGE 3, RECORDS OF SAID COUNTY AND STATE. CONTAINING 1,000 SQUARE FEET, MORE OR LESS.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

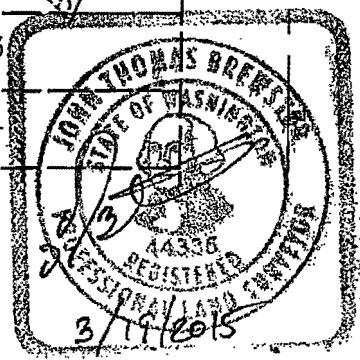
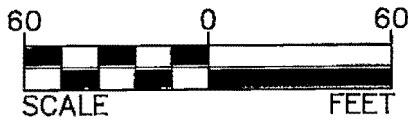


EXHIBIT "B"

CONSOLIDATION AVE.



ALLEN AND SWARTOUTS 4
 ADDITION VOL. 2, PG. 3
 BLK. 1
 BLK. 2



Wilson
 SURVEY/ENGINEERING

WILSON ENGINEERING, LLC
 805 DUPONT STREET
 BELLINGHAM, WA 98225
 (360) 733-8100 • FAX (360) 847-8061
 www.wilsonengineering.com

BELLINGHAM

WASHINGTON

Within the SE 1/4, SE 1/4, Sec. 31,
 Twp. 38 N., Rge. 3 E., W.M.

DATE
 3/18/15

JOB NO.
 15027