

RESOLUTION 2012-PP

A RESOLUTION OF THE EATONVILLE TOWN COUNCIL RELATING TO VACATION OF UNOPENED PORTION OF ALLEY BETWEEN CARTER STREET SW AND CENTER STREET SW AND BETWEEN CEDAR AVENUE N AND PENNSYLVANIA AVENUE N

WHEREAS, EMC Chapter 12.06 sets forth the procedure for vacation of streets and alleys;

WHEREAS, EMC 12.06.020 provides that the Town Council may, by resolution, initiate the procedure for vacation of streets and alleys;

WHEREAS, a plat of the Town of Eatonville, Pierce County, Washington was filed and recorded on June 4, 1897 ("Town Plat"), Volume 7 of Plats, Page 41, records of Pierce County;

WHEREAS, the Town of Eatonville, Pierce County, Washington was voted into incorporation on October 16, 1909;

WHEREAS, the northern half of the alley lying between Carter Street SW and Center Street SW and between Cedar Avenue N and Pennsylvania Avenue N, abutting Lots 1 through 6 of Blocks 12 and 13 of the Town Plat, was not opened or improved for public use within five years of the filing and recording of the Town Plat and does not abut water;

WHEREAS, to this day, the northern half of the alley lying between Carter Street SW and Center Street SW and between Cedar Avenue N and Pennsylvania Avenue N, abutting Lots 1 through 6 of Blocks 12 and 13 of the Town Plat, has never been opened or improved for public use and is, in fact, burdened by mature trees, private yards and structures;

WHEREAS, the Laws of Washington, 1889 – 1890, chapter XIX, § 32, p. 603, Chapter 36.87 RCW *et seq.*, provide:

Any county road, or part thereof, which has heretofore been or may hereafter be authorized, which remains unopened for public use for the space of five years after the order is made or authority granted for opening same, shall be and the same is hereby vacated, and the authority for building the same barred by the lapse of time.

The aforementioned laws, consistent with the holdings of *Brown v. Olmstead*, 49 Wn.2d 210, 299 P.2d 564 (1956) and *Burkhard v. Bowen*, 32 Wn.2d 613, 203 P.2d 361 (1949) and other cases construing these laws, apply to those portions of the unopened streets and alleys within later-incorporated towns and cities, provided that the five year period lapsed prior to 1909 and prior to incorporation of the town or city;

WHEREAS, by operation of the aforementioned law, *i.e.*, Laws of Washington, 1889 – 1890, chapter XIX, § 32, p. 603, Chapter 36.87 RCW *et seq.*, and consistent with the holdings of *Brown v. Olmstead*, 49 Wn.2d 210, 299 P.2d 564 (1956) and *Burkhard v. Bowen*, 32 Wn.2d 613, 203 P.2d 361 (1949) and other cases, that portion of the alley lying within Blocks 12 and 13 and

abutting Lots 1 through 6 thereof was vacated effective June 4, 1902, and the authority for opening or building the for public use same has been barred since that time;

WHEREAS, although the unopened portion of the alley lying within Blocks 12 and 13 of the Town Plat and abutting Lots 1 through 6 thereof has been long-since vacated by operation of law, the alley remains an encumbrance on the underlying and abutting lots, which encumbrance may only be removed by legislative action of the Town Council or by judicial action, *i.e.*, a quiet title action, commenced by one or more of the affected property owners in the Pierce County Superior Court;

WHEREAS, the Town Council, mindful of its authority under EMC Chapter 12.06 of and of the costs and burdens of judicial action, seeks to remove the encumbrance by ordinance as the above-described alley has no value and serves no public purpose;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Eatonville as follows:

Section 1. Pursuant to EMC 12.06.040(A), there shall be a public hearing set at the first regularly scheduled meeting of the Town Council that is not less than 20 (twenty), and in no event later than 60 (sixty) days, from the date of passage of this resolution to adopt an ordinance to vacate the unopened portion of the alleyway the northern half of the alley lying between Carter Street SW and Center Street SW and between Cedar Avenue N and Pennsylvania Avenue N, abutting Lots 1 through 6 of Blocks 12 and 13 of the Town Plat.

Section 2. Pursuant to EMC 12.06.040(A), the Town Clerk shall issue notice at least 20 (twenty) days prior to such public hearing, which notice shall be posted in three of the most public places in the town and a like notice in a conspicuous place on the street or alley sought to be vacated. Said notice shall contain a statement that the Town Council has adopted a resolution to vacate the above-described alley described, together with a statement of the time and place fixed for the hearing of the resolution. The Town Clerk shall also provide notice by mail at least 15 (fifteen) days before the date fixed for the hearing to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting that portion of the above-described alley to be vacated.

Section 3. Pursuant to EMC 12.06.040(C), the Town Council shall hold a public hearing on the date in the notice issued by the Town Clerk to consider and adopt an ordinance to vacate the above-described alley.

Passed by the Council of the Town of Eatonville at a regular meeting this _____ day of June, 2012.

Raymond Harper, Mayor

ATTEST:

Kathy Linnemeyer, Interim Town Clerk

APPROVED AS TO FORM:

Town Attorney