ORDINANCE NO. 2012-8

AN ORDINANCE 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, on June 11, 2012, the Town Council unanimously adopted Resolution 2012-PP, initiating the procedure for vacation of streets and alleys to vacate formally the unopened 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 7 of Blocks 12 and 13 of the Town Plat;

WHEREAS, on June 18, 2012, the Town Clerk issued notice that stated that the Town Council adopted Resolution No. 2012-PP to vacate the above-described alley and that a public hearing on this ordinance would be held on July 9, 2012 at the regularly scheduled meeting of the Town Council, which notice was posted in three of the most public places in the town and in a conspicuous place on the alley sought to be vacated;

WHEREAS, on June 22, 2012, the Town Clerk also provided notice of the public hearing on this ordinance by mail 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;

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

Section 1. 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, and the Town of Eatonville, Pierce County, Washington was voted into incorporation on October 16, 1909.

Section 2. 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 7 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.

Section 3. 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 7 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.

Section 4. 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.

Section 5. 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 7 thereof was vacated effective June 4, 1902, and the authority for opening or building the same for public use has been barred since that time.

Section 6. Although the unopened portion of the alley lying within Blocks 12 and 13 of the Town Plat and abutting Lots 1 through 7 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.

Section 7. 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.

Section 8. The Town Council hereby recognizes that title to the unopened portion of the alley lying within Blocks 12 and 13 of the Town Plat and abutting Lots 1 through 7 thereof was vacated by operation of law on or about June 4, 1902 and therefore the Town Council formally vacates the same.

Section 9. Pursuant to EMC 12.06.060, title to the real property comprising the unopened portion of the alley lying within Blocks 12 and 13 of the Town Plat and abutting Lots 1 through 7 is hereby recognized as belonging to the abutting property owners, one-half to each.

Section 10. Pursuant to EMC 12.06.040(C), the Town hereby retains a non-exclusive easement over the unopened portion of the alley lying within Blocks 12 and 13 of the Town Plat and abutting Lots 1 through 7 thereof for the repair and maintenance of existing public utilities and services located therein.

Section 11. The Town Clerk shall record a certified copy of this ordinance in the office of the Pierce County Auditor.

Section 12. This ordinance shall take effect after publication of a summary, consisting of the title.

1ST READING: 07/09/2012
2ND READING: 07/__/12 (2ND READING WAIVED (EMC 2.04.009(C))

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

_____
Raymond Harper, Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

Public Services Bulic
2401 S. 35th Street
Tacoma, Washington

Washington State Plane Feet, South

DATE OF MAP PRODUCT
04-16-14

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SE15-16-04	SW14-16-04	
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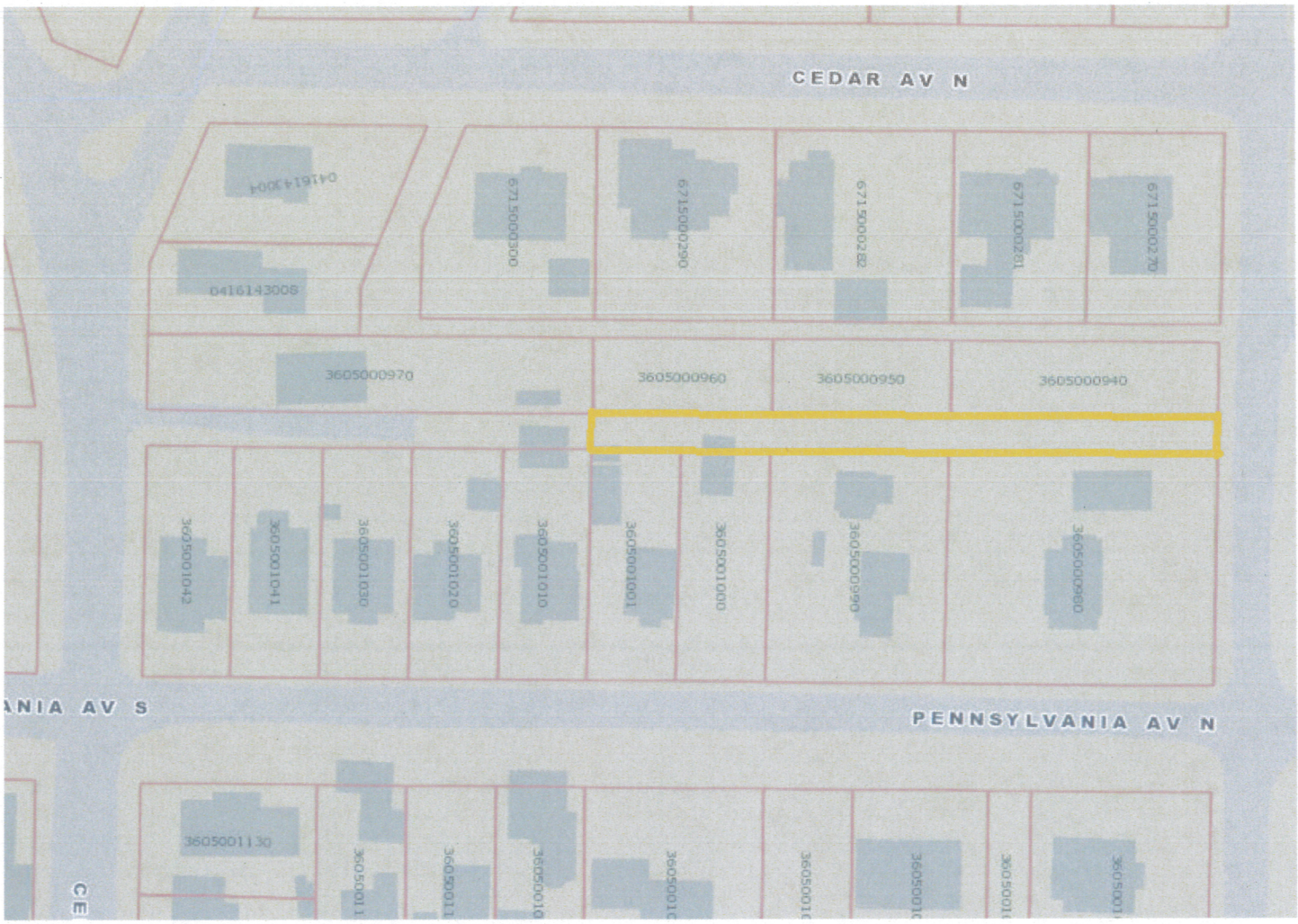
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