

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

RECORDED AT THE REQUEST OF AND AFTER RECORDING RETURN TO:

Aaron M. Laing
Schwabe, Williamson & Wyatt, PC
1420 Fifth Avenue, Suite 3400
Seattle, WA 98101

SIDEYARD SETBACK 'NO BUILD' EASEMENT

Grantor: John D. Hightower

Grantees: Jana L. Gardiner & Richard E. Johnson, husband and wife

Legal Descriptions: Lots 5 & 6, Block 13, Townsite of Eatonville, as per plat recorded in Volume 7 of Plats, Page 41, records of Pierce County, Washington

Tax Parcel Numbers: 3605000990 (Grantor parcel); 3605001000 (Grantee parcel)

THIS EASEMENT AGREEMENT is made by and between Grantor John D. Hightower ("Hightower"), owner of the real property located at 114 Pennsylvania Avenue N, Eatonville, WA, and Grantees Jana Gardiner and Richard Johnson ("Gardiner"), owners of the real property located at 112 Pennsylvania Avenue N, Eatonville, WA.

Hightower and Gardiner are each a Party and collectively the Parties to this Easement Agreement. This Easement Agreement shall be effective as of the date of the last signature below.

For \$10.00 (Ten Dollars) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties warrant, covenant and agree as follows:

1. Hightower Property. Grantor Hightower represents and warrants that he owns that certain parcel of land with Pierce County Assessor's Tax Parcel Number 3605000990, whose common street address is 114 Pennsylvania Avenue N, Eatonville, WA., also known as Lot 5, Block 13, Townsite of Eatonville, as per plat recorded in Volume 7 of Plats, Page 41, records of Pierce County, Washington ("Hightower Property"), as depicted and legally described on Exhibit A hereto.



2. Gardiner Property. Grantees Gardiner represents and warrants that they own that certain parcel of land with Pierce County Assessor's Tax Parcel Number 3605001000, whose common street address is 112 Pennsylvania Avenue N, Eatonville, WA,, also known as Lot 6, Block 13, Townsite of Eatonville, as per plat recorded in Volume 7 of Plats, Page 41, records of Pierce County, Washington ("Gardiner Property"), as depicted and legally described on Exhibit A hereto.

3. Grant of 'No Build' Easement over Sideyard Setback. Grantor Hightower hereby grants, warrants, covenants and conveys to Grantees Gardiner a perpetual, non-exclusive 'No Build' Easement over the approximately nine-foot (9') by twenty-four-foot (24') southwestern-most portion of Grantor's Property, as depicted on Exhibit A hereto and hereinafter referred to as the Easement Area. No primary or secondary structures shall be constructed within the Easement Area.

4. Easement Area Purpose and Scope. The purpose of this 'No Build' Easement is to maintain at least ten feet (10') of horizontal separation between the existing structures on the Gardiner Property along the shared property line and any future structure, whether primary or accessory, to be constructed on the Hightower Property along the shared property line in the Easement Area. The ten feet (10') of horizontal separation preserved by the 'No Build' Easement represents the total standard sideyard setback for structures along a shared property line, per the International Building Code ("IBC"). Although the Town of Eatonville currently uses an eight-foot (8') sideyard setback on each side of a shared property line (*i.e.*, a total of sixteen feet (16') horizontal separation) for residential properties, the Town Planner has agreed to allow use of the IBC's standard ten-feet (10') of total horizontal separation in this instance. The 'No Build' Easement thus only changes the effective sideyard setback on the Hightower Property by one foot (1') along the Easement Area by creating a nine-foot (9') as opposed to eight-foot (8') sideyard setback on the Hightower Property for the length of the Easement Area.

5. Term and Binding Effect. This Easement Agreement shall be effective as of the date of the last signature below. All terms and provisions herein are intended to and shall be covenants running with the land and/or equitable servitudes for the benefit of the Grantees' Property and burdening the Grantor's Property and shall be binding on the Parties and their successors, heirs and assigns.

6. Governing Law and Venue. This Easement Agreement shall be construed in accordance with the laws of the State of Washington. Any action arising out of or relating to this Easement Agreement shall be commenced in the Superior Court for Pierce County, Washington.

7. Attorney's Fees and Costs. In the event any Party hereto files any judicial proceedings of any kind or nature to enforce or interpret the terms of this Agreement, the prevailing Party in such proceeding shall be awarded a judgment against the other Party or Parties for all of their reasonable attorneys' fees and costs incurred in such proceedings, whether incurred in arbitration, at trial or on appeal, or in any bankruptcy proceeding.

8. Whole Agreement; No Third-Party Beneficiaries. This Easement Agreement consists of six (6) pages, including Exhibit A, and is the entire agreement of the Parties on the subject

matter herein. This Easement Agreement may only be modified by a written document signed by all parties and duly recorded. This Easement Agreement is not intended to nor shall it be construed to confer any benefit by any third-party. It is solely for the benefit of the Parties.

9. Copy to Town Planner. Upon recording, Gardiner shall provide a copy of this Easement Agreement to the Town Planner to be kept on file and return a copy of the agreement to Grantor at the address below.

10. Notices. Any notice under this Easement Agreement shall be made in writing by U.S. Mail to the following addresses:

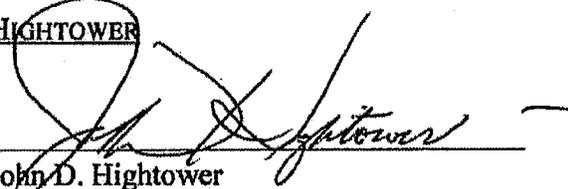
Grantor:

John D. Hightower
P.O. Box 249
Purcellville, VA 20134

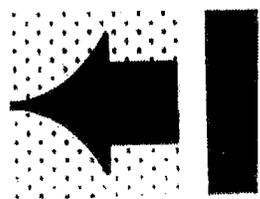
Grantee:

Jana L. Gardiner
P.O. Box 295
Ashford, WA 98304

11. Authority to Execute Easement Agreement. The Parties expressly represent and warrant that the persons executing this Easement Agreement are duly authorized to do so. This Easement Agreement may be executed in counterparts, and each counterpart shall have the same binding legal effect as if it were a single document containing all signatures.

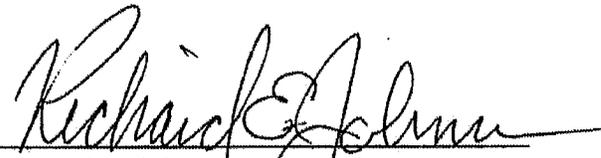
HIGHTOWER


John D. Hightower
Dated 6/22/2012



GARDINER


Jana L. Gardiner, a married woman
Dated 6/27/12



Richard E. Johnson, a married man
Dated 6/27/12

FOUND STONE WITH 'X'
1' DOWN CL± CARTER
3-22-12

FOUND 3" SURFACE BRASS
DISK WITH PUNCH SI± CARTER
& PENNSYLVANIA AVE. 3-22-12

CARTER STREET

LEGAL DESCRIPTION

LOT 6, BLOCK 13, TOWNSITE OF EATONVILLE,
AS PER PLAT RECORDED IN VOLUME 7 OF
PLATS, PAGE 41, RECORDS OF PIERCE
COUNTY, WASHINGTON.

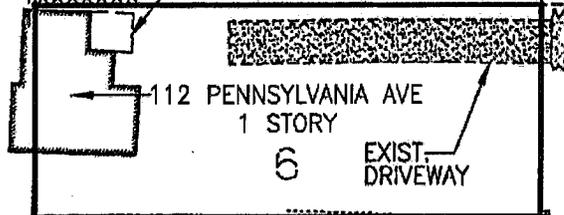
SITUATE IN THE CITY OF EATONVILLE, COUNTY
OF PIERCE, STATE OF WASHINGTON.

WEST LINE NE 1/4 OF THE SW 1/4

20.00'

24.00' NO BUILD EASEMENT
9.00' 10' COVERED DECK

30.00'



112 PENNSYLVANIA AVE
1 STORY

EXIST. DRIVEWAY

20.00'

110 PENNSYLVANIA AVE
1 STORY

ALLEY

PENNSYLVANIA AVE

FOUND LEAD AND TACK IN
CONCRETE 0.2' DOWN SI CENTER
& PENNSYLVANIA AVE. 3-22-12

CALCULATED PLAT
INTERSECTION PER R-1

CENTER STREET

BASELINE ENGINEERING, INC.

Land Development Professional Services

EXHIBIT A
NO BUILD
EASEMENT



NORTH
1"=40'

STATE OF VIRGINIA)
)ss. ACKNOWLEDGMENT
COUNTY OF LOUDON)

I certify that I know or have satisfactory evidence that John D. Hightower signed this instrument on oath and stated that they were authorized to execute the instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated 6/22/12

(Seal or Stamp)

Notary Public - State of Virginia
Residing at Loudoun, Virginia
My appointment expires August 31st 2013

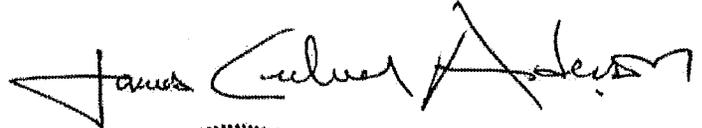


EUNICE N. KPADUWA
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
LOUDOUN COUNTY
ID# 338813
MY COMMISSION EXPIRES AUGUST 31, 2013

STATE OF WASHINGTON)
) ss. ACKNOWLEDGMENT
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Jana L. Gardiner and Richard E. Johnson signed this instrument on oath and stated that they were authorized to execute the instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated 06.27.12



(Seal or Stamp)

Notary Public - State of Washington
Residing at SEATTLE, Washington
My appointment expires 01.03.15

