



## Memo

To: Mayor McCarthy, City Council  
From: Jeff Arango, AICP – Director of Community Planning  
Date: March 31, 2014

### **Re: Anthes Avenue Street Vacation Request**

#### **Background**

The owners of the “Doghouse” at 230 First Street have requested the city vacate a portion of the Anthes Avenue right-of-way between First Street and Seawall Park (See Attachment A for the street vacation request). The areas sought for vacation include the land beneath the existing porch and stairs (currently encroaching on the city right-of-way by 12.97’) on the west side of the building and an approximately 3’ strip of land north of the existing building on the western border of the property. The city vacated an equal 3’ strip of land in 2007 to address the fact that the building encroached on the right-of-way. The extension of the prior vacation is sought to enable expansion of the building to the north without having a jog in the building. Attached B identifies the areas sought for vacation.

The “Doghouse” structure at 230 First Street is the only structure in the city listed on the National Register of Historic Places and is a very important part of the city’s history and identity. For these reasons it is in the public interest to see the historic structure maintained and restored. The porch and stairs on the west side of the building are original features of the building and therefore the encroachment on the city right-of-way has existed for more than 100 years (See Attachment C for Photos of the Doghouse). Historic preservation is an important and valid public purpose and therefore maintaining the historic features of the building is clearly in the public’s interest.

The city attempted to address the issue in 1975 around the time the Seawall was being constructed. The city passed resolution 95A (Attachment D) in 1975 granting an easement 10’ in width along the west side of the structure at 230 First Street and within the Anthes Avenue right-of-way. The purpose of the easement was to address the encroachment of the porch and stairs. The building encroachment does not appear to have been known at the time and therefore the porch and stairs encroach an additional 2.97’ beyond the 10’ easement area. Furthermore, there are legal questions as to whether the city had the authority to grant

an indefinite easement for use of the city owned right-of-way. Regardless, it does not appear the easement addresses the current issues of encroachment or the present street vacation request. Clearly the city council in 1975 was supportive of the continued use of the right-of-way for the porch and stairs regardless of whether or not the correct legal mechanism was used.

## **STREET VACATION OF RIGHT-OF-WAY WITH PUBLIC ACCESS TO THE SHORELINE**

Washington State Law places restrictions on the city's ability to vacate a public right-of-way that provides public access to the shoreline in RCW 35.70.035, which states:

*(1) A city or town shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:*

*(a) The vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;*

*(b) The city or town, by resolution of its legislative authority, declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or*

*(c) The vacation is sought to enable a city or town to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.*

Criteria A and C do not apply to the current street vacation request as it is not being sought to enable the city or town to acquire the property or to enable the town to implement a plan, adopted by resolution or ordinance that provides comparable or improved public access. Criteria B does apply to the current street vacation request as the city must assess the area is suitable for the purposes described above.

As stated previously the porch and stairs of the structure at 230 First Street has existed for more than 100 years. Therefore, a street vacation of the area beneath the porch and stairs would not change the current public access to the shoreline within the right-of-way. However, if the stairs and porch were not encroaching on the right-of-way the area could be used for public access. Or, if at some point in the future the structure is to be rebuilt the encroachment may be removed and the area could be used for public access.

**PROPOSED FINDING:** The area sought for street vacation is suitable for the purposes of Port, beach or water access, boat moorage, launching sites, park, public view, creation or education.

**PROPOSED FINDING: The street vacation request does not satisfy any of the three criteria in RCW 35.79.035**

## **EASEMENT OR ENCROACHMENT PERMIT**

While the city does not appear to have the legal authority under RCW 35.70.035 to vacate the street other options exist to allow use of the right-of-way to allow building rehabilitation and retention of the historic integrity of the structure. Historic preservation is a valid public purpose as stated in RCW 27.34.200:

*The legislature hereby finds that the promotion, enhancement, perpetuation, and use of structures, sites, districts, buildings, and objects of historic, archaeological, architectural, and cultural significance is desirable in the interest of the public pride and general welfare of the people of the state; and the legislature further finds that the economic, cultural, and aesthetic standing of the state can be maintained and enhanced by protecting the heritage of the state and by preventing the destruction or defacement of these assets; therefore, it is hereby declared by the legislature to be the public policy and in the public interest of the state to designate, preserve, protect, enhance, and perpetuate those structures, sites, districts, buildings, and objects which reflect outstanding elements of the state's historic, archaeological, architectural, or cultural heritage, for the inspiration and enrichment of the citizens of the state.*

The Langley Comprehensive Plan also includes strong support for the preservation of historic structures and sites:

***Historic Preservation.*** *Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance. (pg. ES-15)*

*9.2 Encourage the restoration and rehabilitation of historic sites through appropriate means such as increased density, grant and loan technical assistance, adaptive reuse, and others. (pg. LU-32)*

The city may, by resolution, grant use of the areas sought for street vacation based on the following:

1. Historic Preservation is a valid public purpose and it is therefore in the public interest to grant use of the right-of-way to maintain the historic integrity of the structure at 230 First Street, which is listed on the National Register of Historic Places
2. Limit use of the right-of-way for the time period the historic structure at 230 First Street is in existence. If the structure is destroyed, removed or otherwise reconstructed the encroachment shall cease. As with any use granted to use a public right-of-way it is revocable by the city, but the city has maintained support for the Doghouse and use of the right-of-way for several decades.
3. Require that in exchange for use of the right-of-way the property owners agree to maintain the historic integrity of the structure in accordance with the Secretary of Interior Standards for Historic Structures.

## **LAND EXCHANGE**

Another option for addressing the issue of the building encroachment would be to exchange the areas sought for street vacation for an equal amount of land on the north side of the property at 230 First Street (adjacent to seawall park). Seawall park is much more narrow

than it appears as the city owns only the land on the water-side of the dirt roadway that runs adjacent to Seawall Park. The city would therefore be enhancing public access and enjoyment of the shoreline and access from First Street to Seawall Park would remain the same as it has existed for 100 years. This approach would maintain and enhance public access to the shoreline while protecting the integrity of a historic structure and is consistent with the intent of the law.

Staff suggested a land exchange as an option to the owners at 230 First Street several months ago and it was rejected. The property owners may reconsider following the above analysis regarding the feasibility of the street vacation request.

### **STAFF RECOMMENDATION**

Staff recommends the city deny the street vacation request and consider the following options:

1. Provide an easement or right-of-way encroachment permit for the areas sought for street vacation in accordance with the following:
  - a. Purpose of the easement is to maintain the historic integrity of a historic structure listed on the National Register of Historic Places (i.e. valid public purpose).
  - b. Limit the length of time for the encroachment to the life of the historic structure
  - c. Require the structure be maintained in accordance with the Secretary of Interior Standards for Historic Structures
2. Perform a property exchange that involves a the areas sought for vacation in exchange for an equal or greater amount of property on the north side of the existing lot at 230 First Street that would expand Seawall Park.

### **Attachments:**

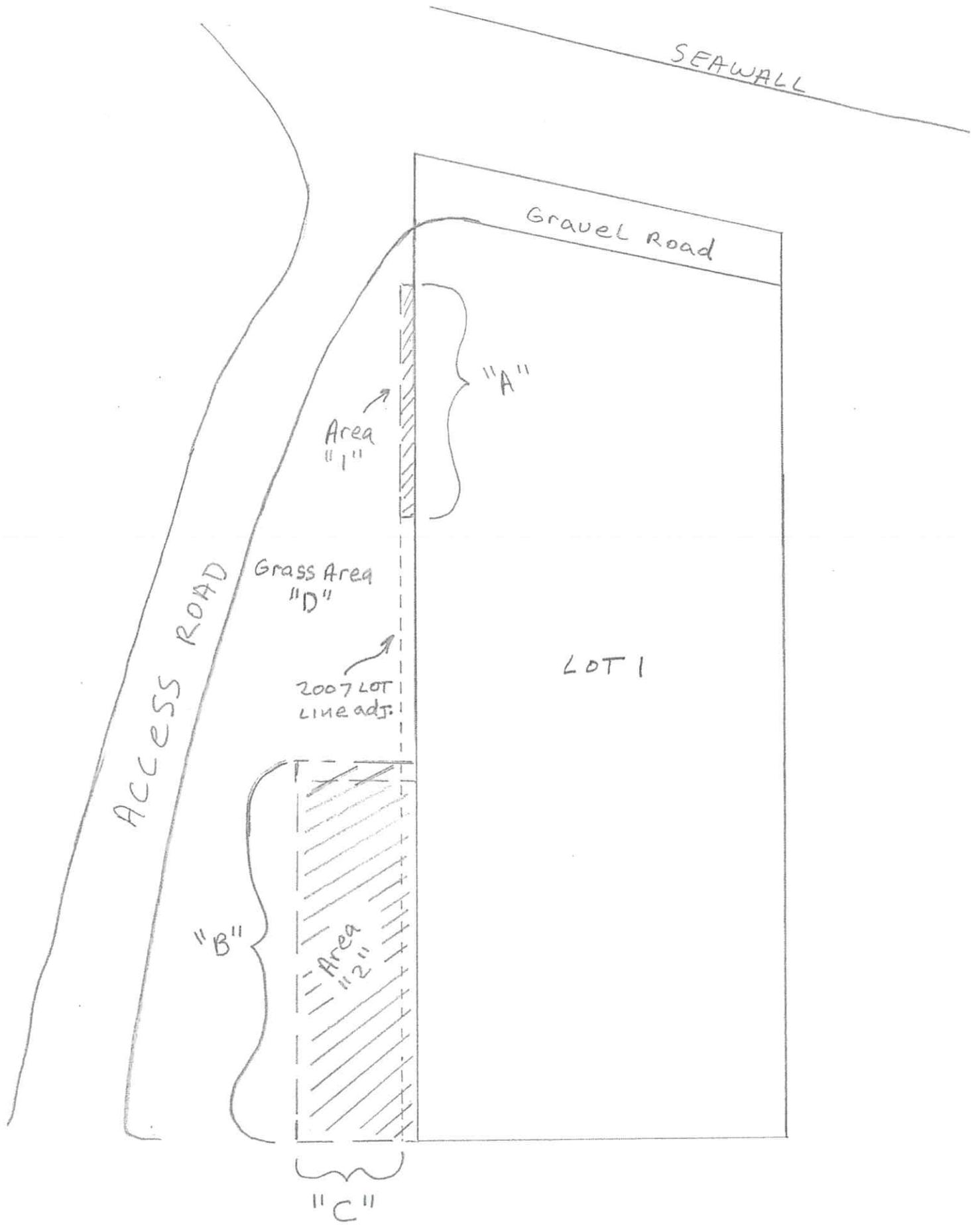
- A. Street Vacation Request
- B. Site Plan
- C. Historic Doghouse Photos
- D. Resolution 95A

# ATTACHMENT A

## Summary of Land Acquisition Request for Doghouse

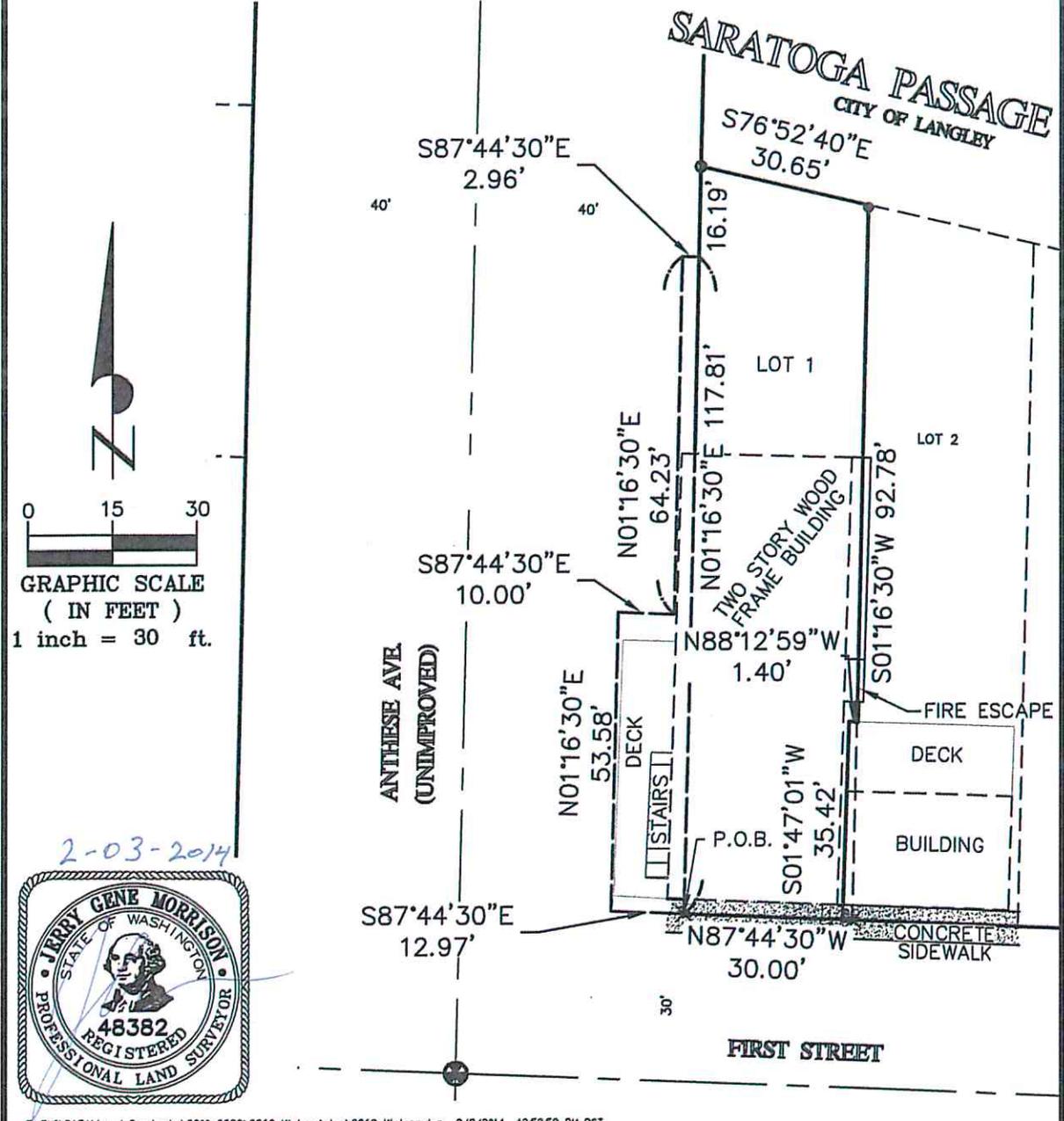
Janice and Charlie Kleiner

- 1) Sometime around 2007, the west boundary line of Lot 1 was adjusted to reflect the building west wall location. This section, 2'-3' by 80' was vacated by the city. "A", is a continuation of said line, and additional 35' to allow for an addition to the existing building. This is noted as area 1 on the drawing.
- 2) "C" is approximately 9.5' and reflects the width of existing side deck/walkway. "B" is 53'7" and reflects the dimension requested to replace the deck/second floor staircase/propane tank base and exterior shear panel. This is noted as area 2 on the drawing.
- 3) We request that the city vacate these areas "1 & 2".
- 4) Area "D": we request that the city grant easement for the purpose of ingress/egress and utilities. This area "D" is what would be observed to be the grassy area between the building west boundary and the access road.



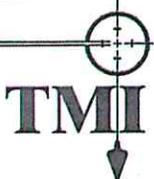
# ATTACHMENT B

## EXHIBIT MAP NW 1/4 OF THE SE 1/4 OF SEC. 34, TWP. 30N., R. 3E., W.M.



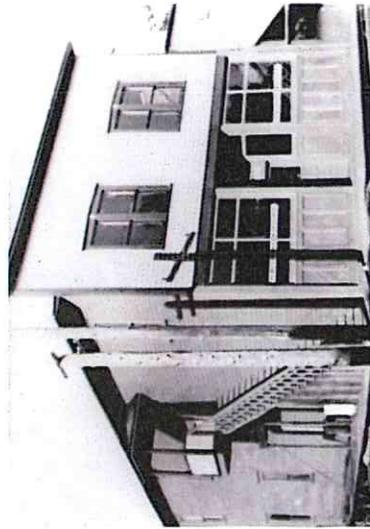
T:\TMI\DATA\Land Projects\8800-8999\8868 Kleiner\dwg\8868 Kleiner.dwg 2/3/2014 12:59:59 PM PST

FILE No. 8868
SCALE: 1 IN = 30 FT
APPROVED BY: JGM
DRAWN BY: CHS
DATE: 2-3-14

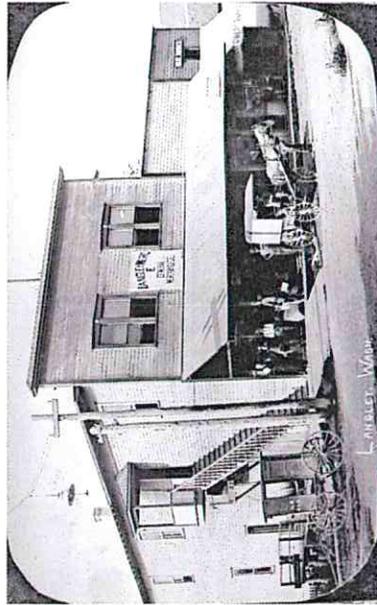


### TMI Land Surveying

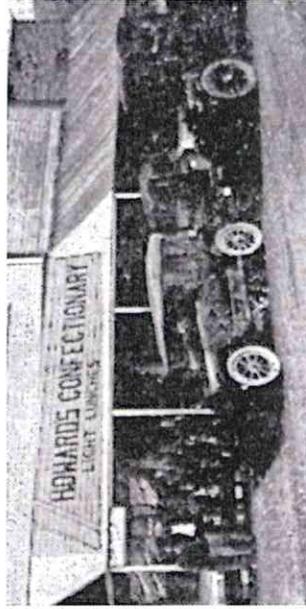
P.O. Box 1011  
5571 Lotto Avenue, Suite B  
Freeland, Washington 98249  
360-331-7393 Fax 360-331-7394



Olympic Club - 1908



Langley Merc and General Merchandise - 1912 - 1916



Howard's Confectionary - 1916 - 1933

**Dog House Tavern - 1933 -- 2014**



Attachment D

CITY OF LANGLEY

Resolution Number. 95A

A resolution authorizing Donald D. Manchester, Mayor of the City of Langley, to sign an easement granting use of ten (10) feet on the East side of Anthes Avenue North of First Street to Norman and Daisy Ruth Desdier.

BE IT RESOLVED by the City Council of the City of Langley that Donald D. Manchester, Mayor of the City of Langley, be authorized and directed to sign an easement granting use of ten (10) feet on the East side of Anthes Avenue North of First Street to Norman and Daisy Ruth Desdier. The easement is to be on the following described property:

The ten (10) feet along and adjacent to the West line of Lot 1, Block 13 of Langley (being the Easterly ten (10) feet of Anthes Avenue), as per plat recorded in Volume 2 of Plats, page 15, records of Island County.

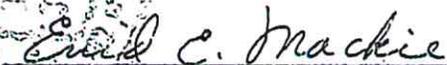
ADOPTED BY THE CITY COUNCIL of the City of Langley, Washington, at its regular meeting held May 20, 1975.

CITY OF LANGLEY, WASHINGTON



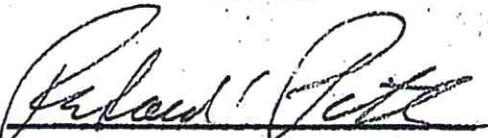
Donald D. Manchester, Mayor

ATTEST:



Enid E. Mackie, City Clerk

APPROVED AS TO FORM:



Richard L. Pitt, City Attorney

