

MEMORANDUM

TO: Mayor Fred McCarthy
Langley City Council

FROM: Michael Davolio, AICP
Director of Community Planning

SUBJECT: Partial Street Vacation Request, Anthes Avenue

DATE: August 24, 2015

Background:

In 2007, the City vacated a strip of land (approximately ten feet in width) in recognition of the fact that the land in question was actually a part of the building known as the Dog House Tavern.

Charles and Janice Kleiner, the current owners of the property at 230 First Street (the Dog House Tavern) purchased the property on May 7, 2010. Since their purchase, the Kleiners have been attempting to either demolish or rehabilitate the structure. On May 5, 2014 the City of Langley passed Ordinance #999, essentially prohibiting the demolition of this historic structure. In reviewing their development options, the Kleiners learned that the deck and stairs on the western side of the building are located within the Anthes Avenue right-of-way.

On March 16th of this year, the City Council voted unanimously to agree to a “land swap” that would convey the land beneath their deck, plus a small strip of additional land from the City to the Kleiners, in exchange for a parcel of land on the north side of their property. That agreement was based upon an appraisal commissioned by the Kleiners that indicated that the properties to be exchanged were of approximate value.

The Dog House is the only structure in Langley that is listed on the National Register of Historic Places. As such, the building is an essential element of the city’s history and identity. The deck and stairs on the west side of the building are original features of the building, indicating that their encroachment onto the Anthes Avenue right-of-way has continued unabated for more than 100 years.

Process:

The process to vacate all or a portion of a public right-of-way is governed by state law. In the case of a street right-of-way that provides access to a shoreline, the process is significantly more stringent. RCW 35.79.035 provides that a city must meet at least one of three requirements in order to vacate

or partially vacate a street that leads to a waterfront. (*see Appendix A*) In general, those requirements are:

- a) that the city is acquiring property to improve park, public views, or water access;
- b) that the portion of the street to be vacated is not presently used as a street or alley; *or*
- c) that the vacation will help the city to implement an adopted plan to provide comparable or improved access to the same shoreline.

In consultation with the City Attorney, the recommended course of action is to process the partial street vacation in accordance with RCW 35.79.035(1)(c):

“(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:

“(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.”

On January 21, 2014, the City of Langley adopted Ordinance #996, the Shoreline Master Program. That plan contains the following goal:

2.3.B.1: Expand and enhance the development of safe, convenient, and diversified public access to the shorelines ... in the City of Langley.

In addition, on December 19, 2007, the City adopted Ordinance #897, updating its Comprehensive Plan. That plan's Parks, Open Space, and Trails element contains the following:

Goal 3: Preserve, protect, and expand, when possible, opportunities for the public to have access to and enjoy the waterfront area of the city.

3.3.P The City should work cooperatively with private property owners as they seek to expand business opportunities in the waterfront area ...

The staff has drafted Ordinance 1021 for the Council's consideration and action, subject to review and approval by the City Attorney.

Conditions:

During earlier discussions of the proposed street vacation, an owner of abutting property observed that a land swap may enable the Dog House to utilize the deck/walkway in a manner that would create excessive noise that would impact abutting properties. For that reason, the abutting property owner suggested adding a condition to the transaction that would limit the use of the deck to access and egress only.

In the interest of ensuring that the transaction has the desired result of facilitating the renovation of the property, it is suggested that an additional condition would nullify the vacation and property transfer if the property is demolished for any reason.

Suggested Findings of Fact:

These findings are included as part of the "WHEREAS" portion of Ordinance 1021.

1. The parcel of land to be acquired by the City in exchange for that portion of Anthes Avenue to be vacated will improve the use of Seawall Park for water viewing and recreational purposes, and will enhance visual and physical access by the public to the Saratoga Passage waterfront.
2. That portion of Anthes Avenue proposed to be vacated is not presently being used and is unavailable for use as a street or alley.
3. The acquisition of property adjacent to the vacated portion of Anthes Avenue is sought to enable the City to implement Goal 3 of the Parks, Open Space, and Trails Element of the City's Comprehensive Plan By improving waterfront access while assisting a local business to expand a business opportunity.
4. The acquisition of property adjacent to the vacated portion of Anthes Avenue is sought to enable the City to implement Shoreline Master Program that call for improved access to the waterfront; specifically, to "expand and enhance the development of safe, convenient, and diversified public access to the shorelines and public tidelands in the City of Langley."
5. The vacation of the requested portion of Anthes Avenue is necessary to assist in the preservation of the only building in Langley that is listed on the National Register of Historic Places.
6. The vacation of the requested portion of Anthes Avenue, the payment for which is an exchange for waterfront property of equal value, is in the public interest.
7. The vacation of the requested portion of Anthes Avenue meets the requirements of RCW35.79.035(1)(c) by enabling the City to implement portions of its Comprehensive Plan and Shoreline Master Program.

APPENDIX A

RCW 35.79.035

Limitations on vacations of streets abutting bodies of water — Procedure.

(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.

(2) Before adopting a resolution vacating a street or alley under subsection (1)(b) of this section, the city or town shall:

(a) Compile an inventory of all rights-of-way within the city or town that abut the same body of water that is abutted by the street or alley sought to be vacated;

(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 should attend the public hearing or send a letter to a particular official indicating his or her objection; and

(d) Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (b) of this subsection, and that the vacation is in the public interest.

(3) No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys received from the vacation may be used by the city or town only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites.

APPENDIX B

**Boundary Exhibit Map
and
Property Exchange Descriptions
230 First Street**




BOUNDARY EXHIBIT MAP

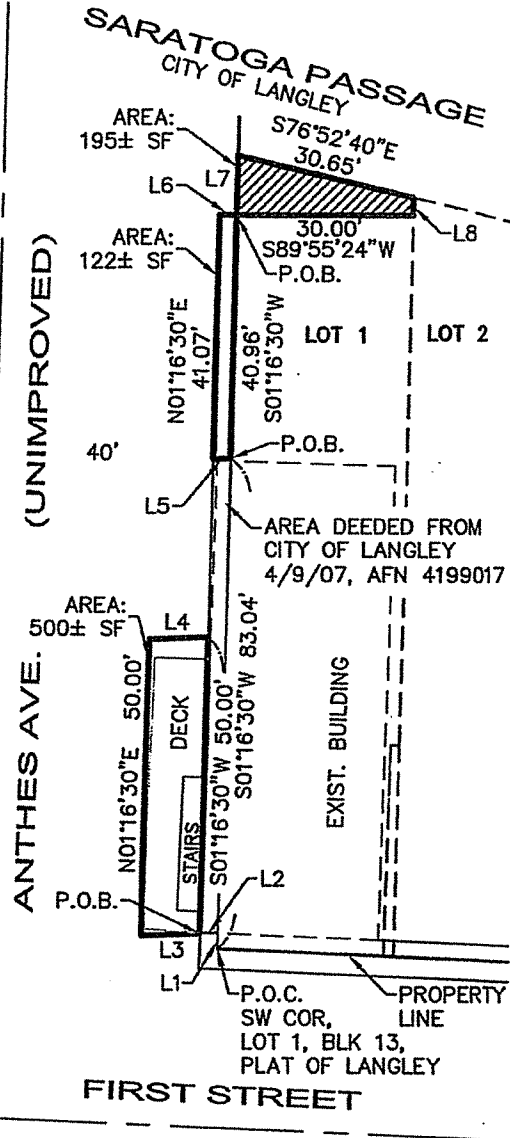
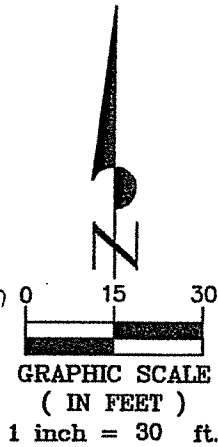
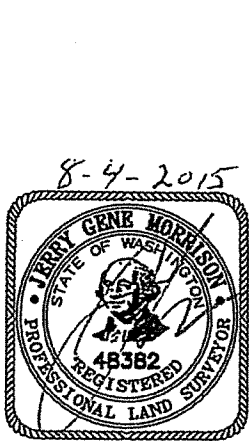
A PORTION OF BLOCK 13, PLAT OF LANGLEY
SEC. 34, TWP. 30N., R. 3E., W.M.

LINE TABLE

LINE	BEARING	LENGTH
L1	N 01°16'30" E	2.69'
L2	S 87°44'30" W	2.97'
L3	S 87°44'30" W	10.02'
L4	N 87°44'30" E	10.02'
L5	S 87°44'30" W	2.97'
L6	N 89°55'24" E	2.97'
L7	N 01°16'30" E	10.00'
L8	S 01°16'30" W	3.00'

LEGEND

-  MONUMENT IN CASE
-  LAND TO CITY OF LANGLEY
-  LAND TO LOT 1
TAX PARCEL S7345-00-13001-0



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FILE No. 8868
SCALE: 1 IN = 30 FT
APPROVED BY: JGM
DRAWN BY: TS
DATE: AUGUST 4, 2015



TMI Land Surveying

P.O. Box 1011
5571 Lotto Avenue
Freeland, Washington 98249
360-331-7393 www.surveywhidbey.com

KLEINER TO LANGLEY

That portion of Lot 1, Block 13, Plat of Langley, as recorded in Volume 2 of Plats, page 15, Records of Island County, Washington, described as follows:

Commencing at the Southwest corner of said Lot 1;

THENCE North $01^{\circ} 16' 30''$ East, a distance of 124.00 Feet to the POINT OF BEGINNING;

THENCE continue Northerly along said line, a distance of 10.00 Feet;

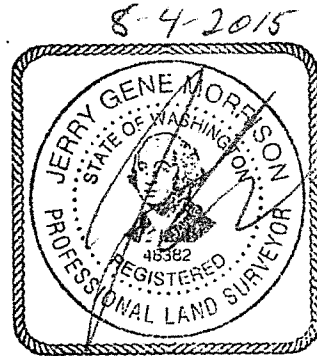
THENCE South $76^{\circ} 52' 40''$ East, a distance of 30.65 Feet;

THENCE South $01^{\circ} 16' 30''$ West, a distance of 3.00 Feet;

THENCE South $89^{\circ} 55' 24''$ West, a distance of 30.00 Feet to the POINT OF BEGINNING.

Containing 195 square Feet, more or less.

Situate in the County of Island, State of Washington.



LANGLEY TO KLEINER

The Easternmost portion of Anthes Avenue Right of Way (ROW) North of First Street in the Plat of Langley, as recorded in Volume 2 of Plats, page 15, Records of Island County, Washington, described as follows:

Commencing at the Southwest corner of Lot 1, Block 13, of said Plat of Langley;

THENCE North $01^{\circ} 16' 30''$ East, a distance of 2.69 Feet;

THENCE South $87^{\circ} 44' 30''$ West, a distance of 2.97 Feet to the POINT OF BEGINNING;

THENCE continue westerly along said line, a distance of 10.02 Feet;

THENCE North $01^{\circ} 16' 30''$ East, a distance of 50.00 Feet;

THENCE North $87^{\circ} 44' 30''$ East, a distance of 10.02 Feet;

THENCE South $01^{\circ} 16' 30''$ West, a distance of 50.00 Feet to the POINT OF BEGINNING.

Containing 500 square Feet, more or less.

TOGETHER with the Easternmost portion of said Anthes Avenue, described as follows:

Commencing at the Southwest corner of Lot 1, Block 13, of said Plat of Langley;

THENCE North $01^{\circ} 16' 30''$ East, a distance of 83.04 Feet to the POINT OF BEGINNING;

THENCE South $87^{\circ} 44' 30''$ West, a distance of 2.97 Feet;

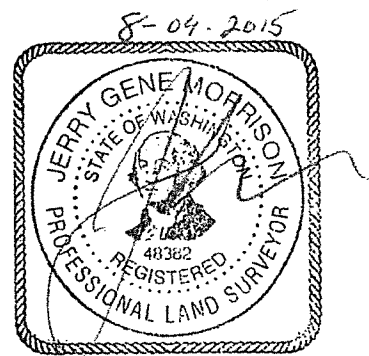
THENCE North $01^{\circ} 16' 30''$ East, a distance of 41.07 Feet;

THENCE North $89^{\circ} 55' 24''$ East, a distance of 2.97 Feet;

THENCE South $01^{\circ} 16' 30''$ West, a distance of 40.96 Feet to the POINT OF BEGINNING.

Containing 122 square feet, more or less.

Situate in the County of Island, State of Washington.



**LANGLEY CITY COUNCIL
ORDINANCE NUMBER 1021**

AN ORDINANCE OF THE LANGLEY CITY COUNCIL TO VACATE A PORTION OF ANTHER AVENUE.

WHEREAS, the existing porch on the west side of the building at 230 First Street is located on a portion of the city owned right-of-way that constitutes Anthes Avenue; and

WHEREAS, the owners of the property at 230 First Street, otherwise known as the Doghouse, have requested the city vacate the portion of the Anthes Avenue right-of-way beneath the existing porch and an equivalent two to three foot strip of land extended from the northerly terminus of the existing building along the west property line to the northerly terminus of the property; and

WHEREAS, that portion of Anthes Avenue proposed to be vacated is not presently being used and is unavailable for use as a street or alley; and

WHEREAS, the acquisition of property adjacent to the vacated portion of Anthes Avenue is sought to enable the City to implement Goal 3 of the Parks, Open Space, and Trails Element of the City's Comprehensive Plan By improving waterfront access while assisting a local business to expand a business opportunity; and

WHEREAS, the parcel of land to be acquired by the City in exchange for that portion of Anthes Avenue to be vacated will improve the use of Seawall Park for water viewing and recreational purposes, and will enhance visual and physical access by the public to the Saratoga Passage waterfront; and

WHEREAS, the acquisition of property adjacent to the vacated portion of Anthes Avenue is sought to enable the City to implement Shoreline Master Program that call for improved access to the waterfront; specifically, to "expand and enhance the development of safe, convenient, and diversified public access to the shorelines and public tidelands in the City of Langley"; and

WHEREAS, the vacation of the requested portion of Anthes Avenue is necessary to assist in the preservation of the only building in Langley that is listed on the National Register of Historic Places; and

WHEREAS, the vacation of the requested portion of Anthes Avenue, the payment for which is an exchange for waterfront property of equal value, is in the public interest; and

WHEREAS, the vacation of the requested portion of Anthes Avenue meets the requirements of RCW35.79.035(1)(c) by enabling the City to implement portions of its Comprehensive Plan and Shoreline Master Program; and

WHEREAS, the Langley City Council has held a Public Hearing pursuant to Resolution Number 774, adopted on August 17, 2015, to consider testimony on the proposed partial street vacation on September 8, 2015; and

WHEREAS, the notice of Public Hearing held on September 8, 2015 was posted and advertised as required, not less than twenty (20) days prior to convening the Public Hearing;

NOW, THEREFORE, the City Council of the City of Langley, Washington do hereby ordain as follows:

Section 1. The City Council hereby agrees to vacate and convey to Charles and Janice Kleiner, by quitclaim deed, that portion of Anthes Avenue as set forth in Exhibit A, "Langley to Kleiner."

Section 2. The City Council hereby agrees to accept as full payment for the premises identified in Section 1, the premises described in Exhibit B, Kleiner to Langley, subject to receipt of a Warranty Deed from Charles and Janice Kleiner for said property.

Section 3. The use of the vacated portion of Anthes Avenue conveyed to Charles and Janice Kleiner shall be limited to access and egress from the premises located at 230 First Street.

Section 4. The partial street vacation and property transfer that is the subject of this Ordinance shall be nullified if the premises located at 230 First Street are demolished for any reason.

PASSED by the City Council of the City of Langley and **APPROVED** by the Mayor this _____ day of September, 2015.

Fred McCarthy, Mayor

Debbie L. Mahler, Director of Finance/Clerk

APPROVED AS TO FORM:

Jeff Taraday, City Attorney

EXHIBIT A

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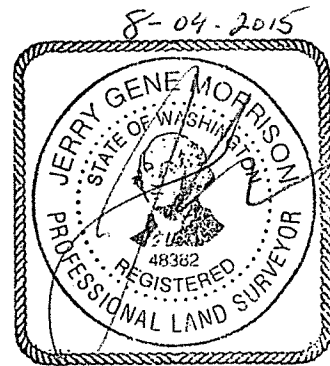


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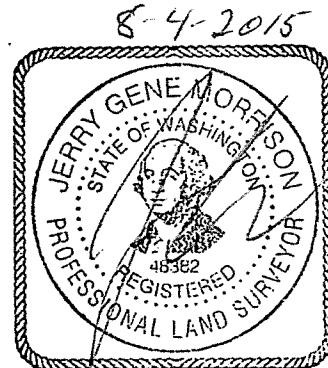


EXHIBIT C




BOUNDARY EXHIBIT MAP

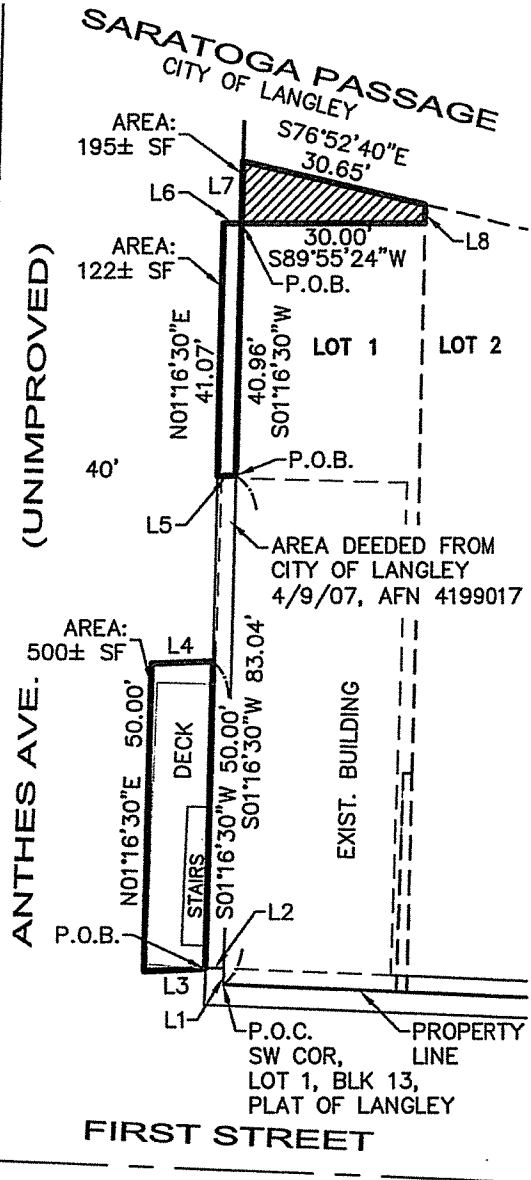
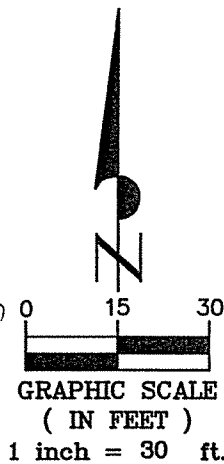
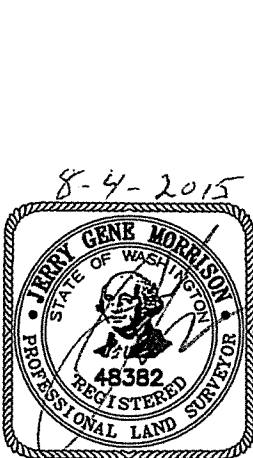
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TAX PARCEL S7345-00-13001-0



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FILE No. 8868
SCALE: 1 IN = 30 FT
APPROVED BY: JGM
DRAWN BY: TS
DATE: AUGUST 4, 2015



TMI Land Surveying

P.O. Box 1011
5571 Lotto Avenue
Freeland, Washington 98249
360-331-7393 www.surveymwhidbey.com