

**CITY OF BLAINE
REQUEST FOR COUNCIL ACTION
MEETING DATE:**

SUBJECT: Ordinance for Boardwalk Easement Acquisition

SUBMITTING DEPT: City Manager

PREPARED BY: Gary Tomsic

AGENDA LOCATION: Comments/Communications ☐ Consent ☐ Committee Reports ☐
Unfinished Business ☒ New Business ☐ Public Hearing ☐ Standing Committees ☐

ATTACHMENTS: Copy of Ordinance 07-2689

ANALYSIS/SUMMARY: There remain two parcels of property that we have yet to acquire an easement. One is an odd shaped parcel belonging to a lady in Alaska. The other is a property owned by Adolfinia and Mannhalt. There has been some confusion on the ownership of this parcel that has made it difficult to negotiate. This ordinance allows us to proceed with legal action to acquire the property through eminent domain if necessary. We will continue to try to negotiate, but that has not been successful.

RECOMMENDATION: ☒ Waive 2nd Reading: (Include conditions of approval if applicable) Staff recommends that City Council

Recommend that the ordinance be approved.

FISCAL ANALYSIS: The City will have to pay for the easements probably at a cost of less than \$30,000.

REVIEWED BY:

City Manager _____ Finance Dir. _____ City Clerk _____

COUNCIL ACTION:

☐ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to: _____

COUNCIL ACTION: _____

ORDINANCE NO. 07-2689

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON, AUTHORIZING THE CITY TO ACQUIRE BY NEGOTIATION AND/OR TO PROSECUTE AN ACTION IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON FOR WHATCOM COUNTY UNDER THE RIGHT AND POWER OF EMINENT DOMAIN/CONDEMNATION FOR THE ACQUISITION OF AN EASEMENT AND RIGHT-OF-WAY OVER, ABOVE, UPON, UNDER AND THROUGH THE PROPERTY DESCRIBED HEREIN; AND DIRECTING COMPENSATION FOR THE SAME TO BE PAID TO THE PROPERTY OWNER BY THE CITY OF BLAINE; AND DECLARING THE TAKING OF SAID EASEMENT AND RIGHT-OF-WAY AND RIGHTS HEREIN DESCRIBED TO BE FOR PUBLIC USE, PURPOSE, AND NECESSITY; AND THAT THE CITY REQUIRES THE IMMEDIATE USE AND POSSESSION OF SUCH PROPERTY AND/OR AN EASEMENT OVER, ABOVE, UPON, UNDER, AND THROUGH SAID PROPERTY TO ALLOW FOR A PUBLIC BOARDWALK, PUBLIC ACCESS THERETO, AND SUPPORTING UTILITIES AND INFRASTRUCTURE, AND MAINTENANCE THERETO.

WHEREAS, the best interests of the inhabitants of the City of Blaine (the "City") require the City to install, acquire, construct, and maintain a Public Boardwalk (hereinafter referred to as the "Blaine Boardwalk") for public access over the properties immediately west (waterward) of Peace Portal Drive between H and G Street in the City of Blaine; and

WHEREAS, the construction and maintenance of the Blaine Boardwalk is for public use and is necessary as determined in prior City planning documents, to encourage and facilitate the economic revitalization of the downtown area of Blaine through the development of public access to views of Boundary Bay, and other related public amenities related to the Blaine Boardwalk and activities that may occur thereupon; and

WHEREAS, in order to install, acquire, construct, and maintain the Blaine Boardwalk and related infrastructure, equipment, and facilities an easement and/or right-of-way is required for the benefit of the City within which the Blaine Boardwalk may be located.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON as follows:

Section 1: That the City is hereby authorized and directed to acquire by negotiation, to purchase and/or to institute, and prosecute to determination in the Superior Court of the State of Washington, in Whatcom County, an action in the name of the City of Blaine for acquisition and condemnation of certain property and property interests including, but not limited to, ownership and/or easements under, over, above, through, and upon real property for the purpose of establishing and maintaining a public right of way/public easement and right-of-public access, boardwalk and related infrastructure, utilities and facilities related thereto, said rights to remain in perpetuity. Said rights shall include, at the City's option, ownership, easements, or any combination thereof deemed necessary by the City.

The properties affected by this Ordinance are generally described in Exhibit "A", attached hereto and incorporated herein by this reference. By this Ordinance, the City is authorized to acquire interests in those portions of, or interest in, over, under, or above, upon, and through the real property described in Exhibit "A", with said easement areas described with more particularity in Exhibit "B". The public easement right-of-way and utilities, if any, are more particularly described in Exhibit "B", attached hereto and incorporated herein by this reference. A sample draft copy of the proposed Easement and right-of-way, as sought by the City and authorized hereby is attached hereto as Exhibit "C" and is herein incorporated by this reference.

Section 2: The City Council hereby finds and declares that the acquisitions of the rights herein described are for public use and are necessary for public purposes.

Section 3: Nothing in this Ordinance shall be construed as a waiver by the City of its right to decline to take and pay for such right of properties and lands herein described should it so elect after the amount of damages has been ascertained and within the time allowed by law.

Section 4: That compensation for the lands, rights, and easements herein to be taken and/or damages shall be paid for by the City in a manner provided by law.

Section 5: All ordinances or parts of ordinances of the Blaine Municipal Code that conflict with this Ordinance are hereby repealed.

Section 6: If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 7: This Ordinance shall be in force from and after passage by the City Council and approval by the Mayor, if approved, as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLAINE, WASHINGTON on the ____ day of November, 2007, and approved by the Mayor on the same day.

CITY OF BLAINE, WASHINGTON

Mike Myers, Mayor

ATTEST/AUTHENTICATE:

Sheri Sanchez
City Clerk

APPROVED AS TO FORM:

Jonathan Sitkin
City Attorney

PROPERTY OWNERS/EASEMENT

GEOCODE	PROPERTY ADDRESS	PROPERTY OWNER	PROPERTY OWNER MAILING ADDRESS	PROPERTY OWNER PHONE	EXISTING BUSINESS
415136499023	665 PEACE PORTAL DR.	ADOLFINA A. KOZLOWSKI; GUENTER MANNHALT	C/O MARIA RUBEN 5841 MALLOW AVE FERNDAL, WA 98248; 327 N. 105 TH ST. #C SEATTLE, WA 98133	UNAVAILABLE; (206)783-0757 FX(206)783-5484	VACANT BUILDING
415136499010	0 PEACE PORTAL DR.	BEVERLY J. HENDRICKS	2700 SCARBOROUGH DR. ANCHORAGE, AK 99504	UNAVAILABLE	VACANT LOT

F:\BLAINE CITY OR CITY MANAGER\BOS\BOS\BOS\Kozlowski\Ordinance, Condemnation, Owners, 10.10.07.doc



Kozlowski;



Pacific Surveying & Engineering

1812 Cornwall Avenue • Bellingham, WA 98225

Phone 360.671.7367 • Fax 360.671.4685

E-mail pse@psurvey.com

www.psurvey.com

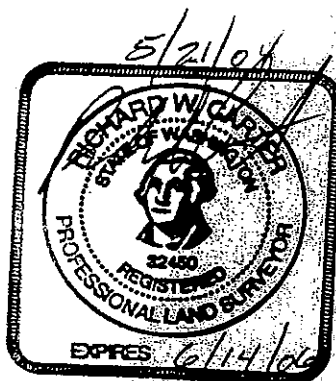
EASEMENT DESCRIPTION

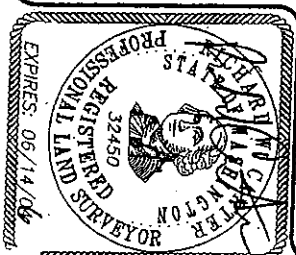
AN EASEMENT FOR PUBLIC BOARDWALK SITUATED IN THOSE PORTIONS OF LOT 6 AND 7 AND THE UN-NUMBERED TRACT LYING BETWEEN LOTS 5 AND 6, BLOCK 1, CAIN'S WATERFRONT ADDITION TO BLAINE, WHATCOM COUNTY, WASHINGTON, AS PER THE MAP THEREOF, RECORDED IN VOLUME 4 OF PLATS, PAGE 5, RECORDS OF WHATCOM COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 7; THENCE ALONG THE NORTH LINE THEREOF, NORTH 88°19'10" WEST 66.54 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 88°19'10" WEST 26.03 FEET; THENCE DEPARTING FROM SAID NORTH LINE, SOUTH 04°17'27" WEST 14.75 FEET; THENCE SOUTH 85°42'33" EAST 5.50 FEET; THENCE SOUTH 02°42'10" WEST 45.57 FEET; THENCE SOUTH 00°57'22" WEST 3.50 FEET TO THE SOUTH LINE OF THE NORTH 12 FEET OF SAID UN-NUMBERED TRACT; THENCE ALONG SAID SOUTH LINE SOUTH 88°17'34" EAST 15.00 FEET; THENCE NORTH 00°57'22" EAST 3.47 FEET; THENCE NORTH 02°42'10" EAST 44.92 FEET; THENCE SOUTH 85°42'33" EAST 5.50 FEET; THENCE NORTH 04°17'27" EAST 15.93 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,130 SQUARE FEET, MORE OR LESS.

SITUATE IN THE CITY OF BLAINE, WHATCOM COUNTY, WASHINGTON.





Handwritten: Hendricks

EXHIBIT A

EASEMENT DISCRPTION



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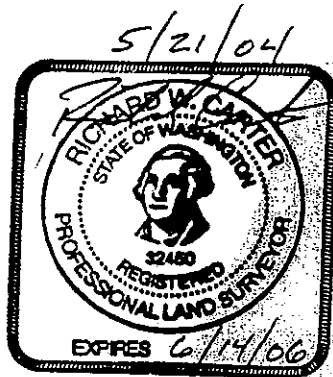
EASEMENT DESCRIPTION

AN EASEMENT FOR PUBLIC BOARDWALK SITUATED IN THAT PORTION OF LOT 2, BLOCK 1, CAIN'S WATERFRONT ADDITION TO BLAINE, WHATCOM COUNTY, WASHINGTON, AS PER THE MAP THEREOF, RECORDED IN VOLUME 4 OF PLATS, PAGE 5, RECORDS OF WHATCOM COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 1, SAID BLOCK 1; THENCE ALONG THE SOUTH LINE THEREOF, NORTH 88°31'32" WEST 68.95 FEET; THENCE DEPARTING FROM SAID SOUTH LINE NORTH 02°58'25" WEST 50.31 FEET TO THE NORTH LINE OF THE SOUTH 24.00 FEET OF SAID LOT 2 AND THE POINT OF BEGINNING; THENCE CONTINUING NORTH 02°58'25" WEST 2.12 FEET TO THE NORTH LINE SAID LOT 2; THENCE ALONG SAID NORTH LINE NORTH 88°23'37" WEST 15.05 FEET; THENCE SOUTH 02°58'25" EAST 2.13 FEET TO SAID NORTH LINE OF THE SOUTH 24.00 FEET OF LOT 2; THENCE ALONG SAID NORTH LINE SOUTH 88°26'51" EAST 15.05 FEET TO THE POINT OF BEGINNING.

CONTAINING 32 SQUARE FEET, MORE OR LESS.

SITUATE IN THE CITY OF BLAINE, WHATCOM COUNTY, WASHINGTON.



EASEMENT FOR PUBLIC BOARDWALK

GRANTOR(S): *Adolfina Kozlowski, Owner(s) of the following described property:*

DESCRIPTION: *The North 12 feet of a tract of land laying between Lots 5 and 6 (otherwise described as all of said tract lying between Lots 5 and 5, Except the South 5 feet thereof) and all of Lots 6 and 7, Cain's Waterfront Addition to Blaine, Whatcom County, Washington, according to the map thereof, recorded in volume 4 of Plats, Page 5, records of Whatcom County, Washington, except the Great Northern Railway Company's right-of-way.*

ASSESSOR'S TAX/PARCEL NUMBER: 415136 499023

GRANTEE: *City of Blaine,*

GRANT OF EASEMENT

Adolfina Kozlowski, Grantor, in consideration of the agreements contained herein and the mutual economic benefit for both parties, grants to the City of Blaine, herein referred to as Grantee, the right, except as limited by this instrument, to use for the purpose of developing and maintaining a public boardwalk and the use of said boardwalk by the public, but not for other purposes, portions of the subject property described in Exhibit "A" (Legal Description) and illustrated on Exhibit "B" (Legal Exhibit Map):

This grant is made on the following terms:

1. The boardwalk shall be constructed and maintained in a good and workmanlike manner and shall be made and kept as safe for public use as practicable. The expense of construction and maintenance of the boardwalk and related facilities shall be borne by Grantee; Grantor shall not be liable for any of the expense of such construction or maintenance.
2. Grantor shall not construct or maintain any structure, or otherwise interfere with Grantee's use of the property for its intended use as a boardwalk or potential future use as a parking area, without the written consent of Grantee; however, Grantee may use the area below the boardwalk for parking provided that such parking does not interfere with the boardwalk, and the City has not provided an alternative to meet the parking requirements of the City zoning code. Nor shall Grantor grant to any person or party permission to do the same, without the written consent of Grantee.
3. As additional consideration for this easement, Grantee shall allow Grantor to connect his/her premises to the boardwalk without payment of a connection fee to Grantee, so long as the connection is in compliance with all applicable government regulations and design standards. Until such time as the Grantee adopts regulations specifically regulating connections to the boardwalk, Grantor agrees to obtain approval, conditional or unconditional, for such connection(s) from the City Planning Commission of Blaine, under the City's procedure and general criteria for conditional use applications, provided that if the Grantor does not obtain such approval, the Grantor shall have no right to connect. Grantee



shall begin the drafting and approval process for such regulations in a timely manner.

4. The rights granted herein include all those necessary to construct, operate and maintain the boardwalk, including the right to perform such actions as clearing, excavating, grading and filling, construction of pilings and elevated structural support, application of rock, and installation of walkways, covered areas, railings, benches, lighting, gutters and other drainage facilities, maintenance access roads, landscaping and those uses associated with public use of the boardwalk and adjacent public use areas.

5. The term of the easement shall be perpetual.

6. This easement shall run with the land and the burden thereof shall be binding upon the present and future owners of the property, their heirs, successors and assigns. The benefits of this easement shall accrue to the City of Blaine which for the purposes of this easement includes the general public's use and enjoyment of the boardwalk and/or future parking areas, but shall not create any rights in or for any specific or individual third party.

7. No changes, modifications or additions to this agreement shall be valid or binding upon either party unless such change or addition is memorialized in writing and executed by authorized representatives of both parties in a manner as required by law.

DATED this _____ day of _____, 200__: