

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

JEFFREY LEWIS and NANCY LEWIS,
husband and wife,

Plaintiffs,

vs.

HILTON LAKE HOMEOWNER'S
ASSOCIATION, a Washington nonprofit
corporation.

Defendant.

NO. 13-2-06808-5

**FINDINGS OF FACTS &
CONCLUSIONS OF LAW**

This matter coming on regularly following a bench trial on January 12, 2016 and the court having reviewed the admitted exhibits and heard the testimony of witness as follows:

Plaintiffs' Witnesses: Bernard Kania, Corrine Wight, Jeffrey Lewis and Nancy Lewis.

Defendant's witnesses: Jim Brandley, Costica Gheorghiu, Mary Flaming.

The court has further reviewed the records and files in this case and in particular a June 18, 2015 order of Judge Bruce Weiss. The court being otherwise fully informed in this matter hereby enters the following findings of fact:

FINDINGS OF FACT

1. The Plaintiffs Jeffrey and Nancy Lewis (hereinafter "Lewis") own Lot 36 ("Lewis Property") of the Hilton Lake Homeowners Association Division No. 2.
2. The Defendant Hilton Lake Homeowner's Association ("HOA") is a nonprofit homeowners association.

- 1 3. The lots in the HOA are subject to covenants and restrictions recorded in 1979 under
2 Snohomish County Auditor File Number 7905230246, as amended.
- 3 4. The lots in the HOA were established by a plat recorded in Volume 39 of Plats, pages
4 264 and 265 records of Snohomish County.
- 5 5. On August 29, 1986, Bernard and Jaqueline Kania bought the Lewis Property from the
6 Messners by way of a statutory warranty deed recorded under Snohomish County
7 Auditor file number 8608290361.
- 8 6. The Kantias sold the Lewis Property to Lewis on August 24, 2006, by way of statutory
9 warranty deed recorded under Snohomish County Auditor file number 200608240700.
- 10 7. The Lewis Property was substantially landscaped in the same general fashion as it has
11 been landscaped through the date of trial as when the Kantias purchased the property.
12 The landscaping was mature when Mr. Kania purchased the property. Given that the
13 established landscaping and informal boundary was mature when the Kania's
14 purchased the property, such encroachment into the common area occurred prior to
15 1986 by a matter of years – the exact amount of years being immaterial. Corrine
16 Wight, whose ownership of her nearby house predated the Kania's ownership,
17 corroborated that the landscaping on the Lewis Property encroached into the common
18 area prior to 1986.
- 19 8. The landscaping on the Lewis Property extended in the rear towards Hilton Lake into
20 the common area. There was a clear demarcation between the Lewis Property and the
21 common area where the gravel in the Lewis Property abutted the grass of the common
22 area. Mr. Kania installed a low brick wall along such demarcation and while the
23 actual date of the installation was unclear, it was undisputedly placed on the then
24 existing demarcation between the gravel and the grass. Such encroachment was in
25 plain sight to anyone who walked along the common area path or in the grassy
26 common area north of the wall.

- 1 9. The Lewis Property also encroached generally to the east where the landscaping
2 extended into the common area path which included a low scalloped brick border and
3 plastic landscaping border. The Lewis Property had a sprinkler system within the area
4 in dispute that predated Mr. Kania's ownership. Additionally the demarcation was also
5 delineated with a different type and color of gravel from that of the common area path.
6 Such encroachment was in plain sight to anyone who walked along the common area
7 path and was visible to any person walking in front of the Lewis Property in the
8 proximity of the common area trail.
- 9 10. The Plaintiff had moved for summary judgment in December 2014 and, after an
10 agreed continuance, was heard on February 26, 2015. After a mediation attempt
11 requested by the court failed, Judge Weiss issued his decision on June 18, 2015
12 denying the motion but limited the sole remaining issue for trial to be if neighborhood
13 work parties worked in the disputed area in such a manner to disrupt exclusivity or if it
14 was conduct that a true owner would permit a third party to do as a neighborly
15 accommodation.
- 16 11. Judge Weiss' June 18, 2015 decision was not reconsidered or appealed and followed
17 CR 56(d) in defining remaining factual issues when denying a summary judgment
18 motion. As such, the trial was limited to a very narrow factual issue related to
19 "whether or not the work parties on the greenbelt were uses the adverse possessor
20 permitted were such as a true owner would permit a third person to do as a neighborly
21 accommodation."
- 22 12. On January 12, 2016 this court held a trial limited to the sole remaining factual issue
23 specified in Judge Weiss' June 18, 2015 order.
- 24 13. The HOA would occasionally have work parties that would, essentially, be a "spring
25 cleaning" of the common areas particularly along the lakes and paths. Such work
26 parties would be on a specified day for several hours and would be attended by a

1 dozen to two dozen homeowners. In some years there would be a second work party
2 which would be more focused on a specific project such as repairing tennis courts or
3 installing a bridge. The annual work parties were congenial affairs and were focused
4 on clearing brush around the lake, cutting vegetation back from the paths, gravelling
5 the paths, cleaning up areas near mail boxes and generally sprucing up the common
6 areas.

7 14. The work parties were not focused on the condition of individual lots.

8 15. The owners of the Lewis Property allowed the work parties to do very little, if
9 anything, on the disputed property. There was scant evidence produced that the HOA
10 or its work parties ever entered or did work on the disputed property.

11 16. The Lewis Property has, during all times relevant to this litigation, been well
12 maintained by both the Plaintiffs and the Kantias. There were many more lots in the
13 Hilton Lake Development that were much more in need of maintenance than the Lewis
14 Property.

15 17. Mary Flaming, the immediate neighbor to the Lewis property to the west, occasionally
16 pulled weeds, removed morning-glory plants, dead-headed rhododendrons in the
17 vicinity of the Lewis-Flaming property border with, per Ms. Flaming, the full consent
18 of Bernard Kania. Such conduct by Mrs. Flaming was an infrequent, minimal
19 neighborly accommodation that was allowed by Mr. Kania.

20 18. The Plaintiffs have met their burden of proof of establishing ownership of the disputed
21 property by adverse possession.

22 19. The disputed area that is to be quieted to the Plaintiffs is legally described as set forth
23 in **Exhibit 1**. Surveyors drafting is attached hereto as **Exhibit 2** for illustrative
24 purposes only.

25 20. Adverse possession cases, by statute, have a discretionary attorney fee shifting
26 provision and the Plaintiffs are the prevailing party. The language of the statute is

1 “The prevailing party in an action asserting title to real property by adverse possession
2 may request the court to award costs and reasonable attorneys’ fees. The court may
3 award all or a portion of costs and reasonable attorney’s fees to the prevailing party if,
4 after considering all the facts, the court determines such an award is equitable and
5 just.” RCW 7.28.083.

6 **CONCLUSIONS OF LAW**

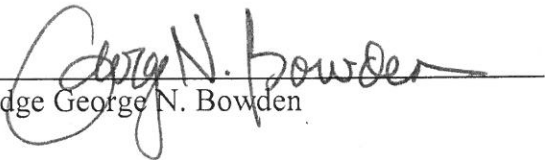
7 Wherefore, having found as set forth above, the Court concludes as a matter of law:

- 8 1. The Plaintiffs and their predecessors have had exclusive use of the disputed area since
9 before 1986.
- 10 2. Based upon Judge Wiess’ June 18, 2015 order, there is no factual dispute that
11 Plaintiffs and their predecessors have had continuous use to the disputed area since
12 before 1986.
- 13 3. Based upon Judge Wiess’ June 18, 2015 order, there is no factual dispute that the
14 Plaintiffs and their predecessors have used the disputed area in a non-permissive
15 manner inconsistent with the rights of the titled owner, the HOA. As such Plaintiffs
16 have established the element of hostility.
- 17 4. Based upon Judge Wiess’ June 18, 2015 order, there is no factual dispute that the
18 encroachments by the Plaintiffs and their predecessor were open and notorious.
- 19 5. There was no work party conduct in the disputed area that disrupted the Plaintiffs’
20 adverse possession.
- 21 6. To the extent there even was any work party conduct in the disputed areas, it was very
22 slight, infrequent and not known to the owners of the Lewis Property and would not
23 have been conduct that a true owner would not have allowed as a neighborly
24 accommodation and, as such, did not disrupt Plaintiffs’ exclusive use.
- 25 7. Mary Flaming’s conduct upon the Lewis Property was slight, infrequent, in the area of
26 the Flaming-Lewis boundary and not the disputed area and such conduct was known

1 and permitted by Mr. Kania and, as such, was the type of use that a true owner would
2 permit a third party to do as a neighborly accommodation.

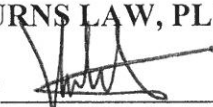
- 3 8. Title to the disputed area shifted as a matter of law under the doctrine of adverse
4 possession to the Kantias no later than 1996 which predated the implementation of
5 RCW 36.70A.165, the greenbelt statute prohibiting adverse possession from
6 homeowners associations, which did not take effect until 1997 and does not have
7 retroactive application per Nickell v. Southview Homeowners Ass'n, 167 Wash. App.
8 42, 53, 271 P.3d 973, 979 (2012).
- 9 9. The Plaintiffs, as the prevailing parties, are entitled to an award of reasonable attorney
10 fees and costs pursuant to RCW 7.28.083 which should be entered by separate order.

11 DATED this 30th day of March, 2016.

12 
13 Judge George N. Bowden

14 **Presented by:**

15 **BURNS LAW, PLLC**

16 By 
17 Martin Burns, WSBA No. 23412
18 Attorney for Plaintiffs

19 **Approved for Entry:**

20 ~~(APPEARED TELEPHONICALLY)~~
21 Antoni H. Froehling, WSBA No. 8271
22 Attorney for Defendant

23 M:\28000\28513 Lewis, Jeffrey & Nancy\Post-Trial Pldgs\Motion for Atty Fees\FOF & COL.doc
24
25
26

EXHIBIT 1

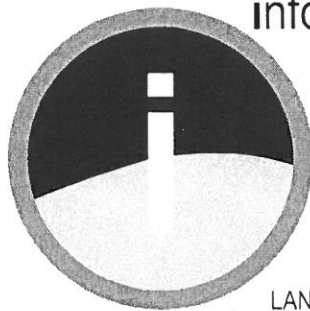
EXHIBIT A

PAGE 1

LEGAL DESCRIPTION

BEGINNING AT THE SOUTHEAST CORNER OF LOT 36, HILTON LAKE DIVISION NO. 2, ACCORDING TO THE PLAT RECORDED IN VOLUME 39 OF PLATS, PAGES 264 AND 265, RECORDS OF SNOHOMISH COUNTY, WASHINGTON; THENCE N 03°39'03" E ALONG THE EAST LINE OF SAID LOT 36 A DISTANCE OF 91.53 FEET; THENCE N 35°35'49" W ALONG THE NORTHEASTERLY LINE OF SAID LOT 36 AND LOT 35 DISTANCE OF 61.18 FEET; THENCE N 19°57'55" E A DISTANCE OF 3.34 FEET; THENCE N 66°56'45" E A DISTANCE OF 23.20 FEET; THENCE S 14°58'59" E A DISTANCE OF 68.87 FEET; THENCE S 00°01'36" E A DISTANCE OF 65.40 FEET; THENCE S 17°56'24" W A DISTANCE OF 22.93 FEET TO A POINT ON THE NORTHERLY MARGIN OF 104TH PL SE BEING A NON TANGENT CURVE TO THE RIGHT; THE RADIUS POINT BEARING N 6°39'54" E AND A DISTANCE OF 335.00 FEET; THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 3.51 FEET THROUGH A CENTRAL ANGLE OF 00°35'59" TO THE POINT OF BEGINNING.

SE 1/4 OF THE SE 1/4 OF SECTION 20 TOWNSHIP
28 NORTH, RANGE 5 EAST OF THE W.M.

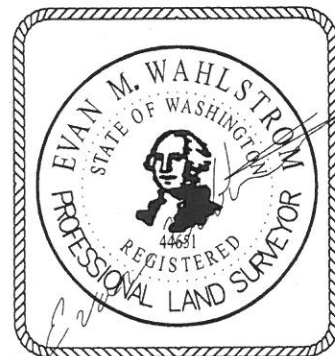


informed land survey

PO Box 5137
Tacoma, WA 98415-0137

Phone: 253-627-2070
Fax: 253-627-9175
www.i-landsurvey.com

LAND SURVEYING, MAPPING, & GIS

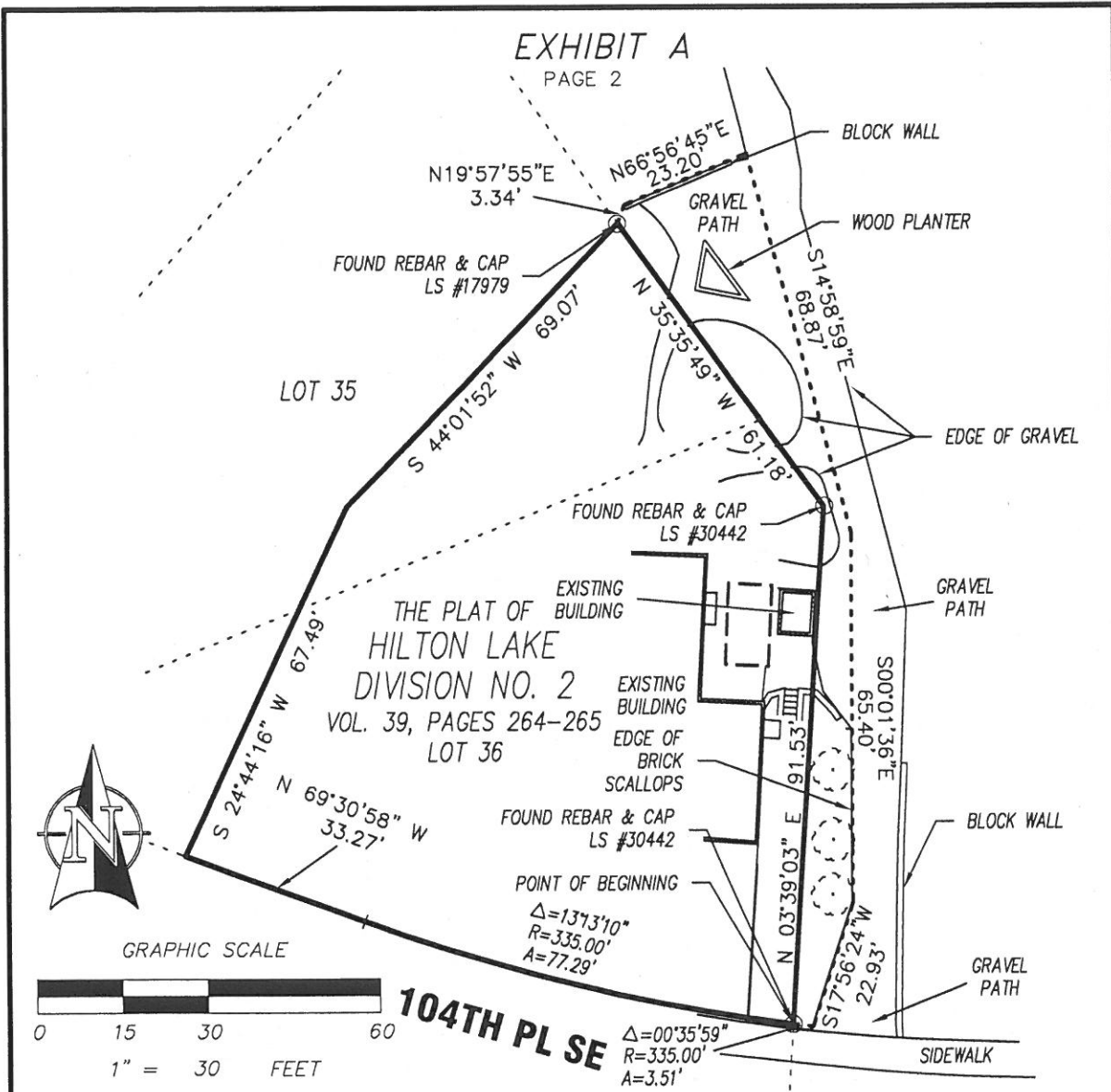


3/30/2016

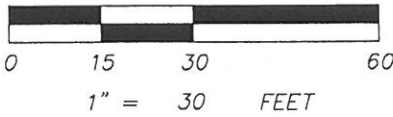
EXHIBIT 2

EXHIBIT A

PAGE 2



GRAPHIC SCALE



SE 1/4 OF THE NE 1/4 OF SECTION 20 TOWNSHIP
28 NORTH, RANGE 5 EAST OF THE W.M.

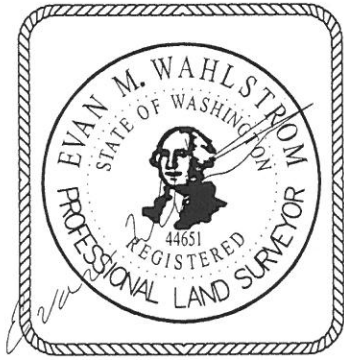


informed land survey

PO Box 5137
Tacoma, WA 98415-0137

Phone: 253-627-2070
Fax: 253-627-9175
www.i-landsurvey.com

LAND SURVEYING, MAPPING, & GIS



3/30/2016