

1 After Recording Return To:
2 Clerk of the Council
3 Snohomish County Council
4 3000 Rockefeller Avenue – M/S 609
5 Everett, WA 98201
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7
8

9 SNOHOMISH COUNTY COUNCIL
10 Snohomish County, Washington

11
12 ORDINANCE NO. 23-058
13

14 AN ORDINANCE AMENDING ORDINANCE NO. 21-036; RELATING TO A
15 VACATED PORTION OF 99th AVENUE NW, A SNOHOMISH COUNTY ROAD
16 RIGHT-OF-WAY
17

18 WHEREAS, Petitioners Gary and Gayeann Buse, Thomas Stephenson,
19 and Greg Brown jointly petitioned Snohomish County to vacate a portion of an
20 unopened Snohomish County right-of-way for 99th Avenue NW which abuts each
21 of the petitioners' properties in the Warm Beach area of unincorporated
22 Snohomish County; and
23

24 WHEREAS, on August 18, 2021, as a result of that petition, the
25 Snohomish County Council ("County Council") adopted Ordinance No. 21-036
26 vacating a portion of 99th Avenue NW, a Snohomish County road right-of-way;
27 and
28

29 WHEREAS, in preparing Ordinance No. 21-036, the Snohomish County
30 Department of Public Works ("Public Works") asked local utilities to determine if
31 any utilities were located in or planned for the right-of-way proposed to be
32 vacated; and
33

34 WHEREAS, as noted in the Snohomish County Engineer's ("Engineer")
35 Report supporting Ordinance No. 21-036, Ziplly Fiber responded that it had
36 utilities in the right-of-way; and
37

38 WHEREAS, due to Ziplly Fiber's response, the Engineer recommended
39 the vacation be conditioned on the petitioners granting an easement to
40 Snohomish County over the vacated right-of-way for the construction, repair and
41 maintenance of public utilities and services within the vacated right-of-way; and
42

43 WHEREAS, the Engineer also recommended Petitioners Buse grant an
44 access easement over that portion of the right-of-way abutting the Buses'
45 property benefitting Petitioner Stephenson who owns Lots 50-53, Block 12, C.D.
46 Hillman's Birmingham Waterfront Addition to the City of Everett and to Petitioner

1 Brown who owns Lots 3-5 Block 11 and Lots 46-49 Block 12 of C. D. Hillmans
2 Birmingham Waterfront Addition to the City of Everett to prevent those properties
3 from becoming landlocked due to the vacation; and
4

5 WHEREAS, Ordinance No. 21-036 was conditioned on the access
6 easement and utility easement recommended by the Engineer; and
7

8 WHEREAS, since the adoption of Ordinance No. 21-036, Ziply Fiber has
9 determined that its response to Public Works inquiry was in error and that it in
10 fact does not have any utilities in or planned for the vacated right-of-way as
11 confirmed in its letter to Public Works dated April 18, 2022; and
12

13 WHEREAS, because there are no utilities located in or planned for the
14 vacated right-of-way, there is no need for Snohomish County to retain a utility
15 easement as required by Ordinance No. 21-036; and
16

17 WHEREAS, Petitioner Brown informed Public Works that he no longer
18 needs an access easement from Petitioners Buse and instead will execute and
19 record a covenant and agreement related to the vacation of the right-of-way; and
20

21 WHEREAS, the covenant and agreement required under this ordinance
22 will run with the land and will ensure that vehicular access will be maintained to
23 all of Brown's property should that property be partitioned and sold independently
24 in the future; and
25

26 WHEREAS, on this _____ day of _____, 2023, pursuant to
27 RCW 36.87.060 and SCC 13.100.060, the County Council held a public hearing
28 to consider the amendment to Ordinance No. 21-036 proposed by this ordinance;
29

30 NOW, THEREFORE, BE IT ORDAINED:
31

32 **Section 1.** The County Council adopts and incorporates the foregoing recitals as
33 findings as if set forth fully herein.
34

35 **Section 2.** Section 6 of Ordinance No. 21-036 adopted on August 18, 2021, is
36 deleted in its entirety and replaced with:
37

38 Within three (3) months of the effective date of Ordinance No. 23-058,
39 Petitioners Gary and Geyanne Buse shall grant and record with the Snohomish
40 County Auditor an access easement over the vacated portion of 99th Avenue NW
41 abutting Lots 1-2, Block 11 C.D. Hillman's Birmingham Waterfront Addition to the
42 City of Everett benefitting Lots 50-53, Block 12 of C.D. Hillman's Birmingham
43 Waterfront Addition to the City of Everett, Petitioner Thomas Stephenson's
44 property.
45

1 **Section 3.** A new section is added to Ordinance No. 21-036 to read:

2
3 Within three (3) months of the effective date of Ordinance No. 23-058, Petitioner
4 Greg Brown shall execute and record with the Snohomish County Auditor the
5 "Covenant and Agreement Related to the Vacation of a Portion of 99th Avenue
6 NW, an Unopened Snohomish County Right-of-Way" attached to this ordinance
7 as Exhibit A to ensure that no portion of his real property becomes land-locked in
8 the future due to the potential independent sale of portions of his real property.
9


10 **Section 4.** Section 7 of Ordinance No. 21-036 is deleted in its entirety.

11
12 Passed this 12th day of July, 2023.
13


14
15 SNOHOMISH COUNTY COUNCIL
16 Snohomish County, Washington

17 
18 _____
19 Chairperson
20

21
22 ATTEST:

23 
24 _____
25 Deputy Clerk of the Council
26

27 (X) APPROVED
28 () EMERGENCY
29 () VETOED

30 
31 _____ 7/13/2023
32 County Executive Date
33

34 ATTEST:

35
36 
37 _____
38
39
40

41 APPROVED AS TO FORM:

42 
43 _____ 7/18/23
44 Deputy Prosecuting Att

EXHIBIT A

Return after filing:

Greg Brown
18907 Soundview Drive NW
Stanwood, WA 98292-7893

COVENANT AND AGREEMENT RELATED TO THE VACATION OF A PORTION OF 99th AVENUE NW, AN UNOPENED SNOHOMISH COUNTY RIGHT-OF-WAY

GRANTOR: Greg Brown, a private individual

GRANTEE: Snohomish County, a political subdivision of the State of Washington

ABBREVIATED LEGAL DESCRIPTION: Section 13 Township 31 Range 3 Quarter SE C. D. HILLMAN'S BIRMINGHAM WF ADD TO COE DIV 1 BLK 011 D-00 COMB FOR TAX PURPOSES ONLY LOTS 3 THRU 5 TGW LOTS 46 THRU 49 BLK 12

TAX PARCEL: 00394401100300

This Covenant and Agreement is entered into by Greg Brown ("Brown"), a private individual owning property in unincorporated Snohomish County and Snohomish County (the "County"), a political subdivision of the State of Washington.

WHEREAS, Gary and Gayeann Buse, Thomas Stephenson, and Brown jointly petitioned Snohomish County to vacate a portion of an unopened Snohomish County right-of-way for 99th Avenue NW which abuts each of the petitioners' properties in the Warm Beach area of unincorporated Snohomish County; and

WHEREAS, on August 18, 2021, the Snohomish County Council adopted Ordinance No. 21-036 relating to the vacation of a portion of an unopened Snohomish County right-of-way for 99th Avenue NW; and

WHEREAS, Brown is the owner of Snohomish County Tax Parcel No. 00394401100300 which is bisected by a portion of the unopened Snohomish County right-of-way vacated by Ordinance No. 21-036; and

WHEREAS, the Brown parcel is described as: Section 13 Township 31 Range 3 Quarter SE C. D. HILLMAN'S BIRMINGHAM WF ADD TO COE DIV 1 BLK 011 D-00 COMB FOR TAX PURPOSES ONLY LOTS 3 THRU 5 TGW LOTS 46 THRU 49 BLK 12; and

Page 1 of 3

**COVENANT AND AGREEMENT RELATED TO THE VACATION OF A PORTION OF
99th AVENUE NW, AN UNOPENED SNOHOMISH COUNTY RIGHT-OF-WAY**

WHEREAS, Snohomish County Tax Parcel No. 00394401100300 is composed of seven historic, substandard lots and; and

WHEREAS, lots 3 through 5 of Block 11 of C.D. Hillman's Birmingham Waterfront Addition (the "Western Portion") and lots 46 through 49 of Block 12 of C.D. Hillman's Birmingham Waterfront Addition (the "Eastern Portion") are separated by a portion of 99th Avenue NW vacated by Ordinance No. 21-036; and

WHEREAS, Ordinance No. 21-036 included a condition that the Buses grant and record with the Snohomish County Auditor an access easement benefitting the Eastern Portion of Brown's property; and

WHEREAS, Brown has informed Snohomish County Department of Public Works that he no longer needs the access easement as required by Ordinance No. 21-036; and

WHEREAS, Snohomish County wishes to avoid the possibility of the Eastern Portion ever becoming a landlocked parcel without adequate vehicular access; and

WHEREAS, in consideration of the County amending Ordinance No. 21-036 to remove the condition that the Buses grant Brown an access easement Brown executes and records this Covenant and Agreement;

NOW THEREFORE, Greg Brown, a private individual owning real property in unincorporated Snohomish County covenants and agrees as follows:

Greg Brown owns real property described as: Section 13 Township 31 Range 3 Quarter SE C. D. HILLMAN'S BIRMINGHAM WF ADD TO COE DIV 1 BLK 011 D-00 COMB FOR TAX PURPOSES ONLY LOTS 3 THRU 5 TGW LOTS 46 THRU 49 BLK 12.

Brown's real property identified by Snohomish County Tax Parcel No. 00394401100300 is depicted in Exhibit A, attached and incorporated into this covenant and agreement.

For the purposes of this Covenant and Agreement, Section 13 Township 31 Range 3 Quarter SE C. D. HILLMAN'S BIRMINGHAM WF ADD TO COE DIV 1 BLK 011 D-00 LOTS 3 THRU 5 shall be known as the Western Portion and Section 13 Township 31 Range 3 Quarter SE C. D. HILLMAN'S BIRMINGHAM WF ADD TO COE DIV 1 BLK 12 LOTS 46 THRU 49 shall be known as the Eastern Portion.

Greg Brown covenants and agrees that should any or all of the Western Portion or any or all of the Eastern Portion be sold, transferred, conveyed, or otherwise disposed of independently of the other portion that Brown, or his successors or assigns, shall provide an access easement benefitting the Eastern Portion and burdening the Western Portion in sufficient in width and location to satisfy applicable Snohomish County Code access requirements as adopted at the time of the sale, transfer, conveyance, or other disposal of the property.

This covenant is intended to be a running covenant, burdening the parties' successors and assigns.

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I, Greg Brown, accept this COVENANT AND AGREEMENT ASSOCIATED WITH THE VACATION OF A PORTION OF 99th AVENUE NW, AN UNOPENED SNOHOMISH COUNTY RIGHT-OF-WAY.

Greg Brown
Greg Brown
Property Owner
18907 Soundview Drive NW
Stanwood, WA 98292-7893

STATE OF WASHINGTON)
)
COUNTY OF Snohomish)

On this day, personally appeared before me Greg Brown, to me known to be the individual described herein and who executed the within and foregoing instrument and acknowledged to me that he (he/she) signed the same as himself (himself/herself) a free and voluntary act and deed for the uses and purposes therein mentioned.
GIVEN under my hand and official seal this 3 day of February, 2023.

Diana L Mix
Notary
Residing at Snohomish County

