



City of Lake Stevens Vision Statement

By 2030, we are a sustainable community around the lake with a vibrant economy, unsurpassed infrastructure and exceptional quality of life.

CITY COUNCIL SPECIAL MEETING AGENDA Lake Stevens Fire District Station 82 Conference Room 9811 Chapel Hill Road, Lake Stevens

Tuesday, October 1, 2019 – 7:00 p.m.

CALL TO ORDER	7:00 p.m.	Mayor
PLEDGE OF ALLEGIANCE		Mayor
ROLL CALL		
APPROVAL OF AGENDA		Council President
CONSENT AGENDA	*A Ordinance 1059 re Condemnation of Portions of Kimmons Property and 79 th Avenue SE	Eric
EXECUTIVE SESSION:		
ADJOURN		

* ITEMS ATTACHED	** ITEMS PREVIOUSLY DISTRIBUTED	# ITEMS TO BE DISTRIBUTED
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THE PUBLIC IS INVITED TO ATTEND

Special Needs

The City of Lake Stevens strives to provide accessible opportunities for individuals with disabilities. Please contact Human Resources, City of Lake Stevens ADA Coordinator, (425) 622-9400, at least five business days prior to any City meeting or event if any accommodations are needed. For TDD users, please use the state's toll-free relay service, (800) 833-6384, and ask the operator to dial the City of Lake Stevens City Hall number.

NOTICE: All proceedings of this meeting are audio recorded, except Executive Sessions.



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LAKE STEVENS CITY COUNCIL
STAFF REPORT

Council Agenda Date: October 1, 2019

Subject: Ordinance 1059 authorizing condemnation of portions of certain properties along 79th Avenue SE and a portion of Snohomish County Tax Parcel No. 2905-2600-1017-00

Contact	Budget	Based on
Person/Department: Eric Durpos, Public Works Director	Impact:	appraisal

RECOMMENDATION(S)/ACTION REQUESTED OF COUNCIL: Approve Ordinance 1059 authorizing the condemnation of Snohomish County tax parcel 2905-2600-1010-00 and portions of Snohomish County tax parcels 2905-2600-1009-00 and authorizing the acquisition and condemnation of a portion of Snohomish County tax parcel 2905-2600-1017-00.

SUMMARY:

The 20-foot-wide strip private road known as 79th Ave SE, south of 20th St SE, has unclear ownerships and easement rights between multiple parties through various actions. This condemnation action is necessary to clarify what rights remain, what rights have been lost, and the value, if any, of those rights that remain. In order to clear title, the City must condemn the property as to the interests of the private road owners, Mathews, Tozer and Purdy or their heirs, and as to the easement interests of all parties who hold easements. Exhibit A & B shows the easement interests and parcel numbers.

In addition to acquiring the 20-foot private road known as 79th Avenue SE, the City must acquire a portion of the Kimmons property 30 feet (North-South) by 50 feet (East-West) in the northeast corner of the Kimmons property to allow for a turning radius onto the future 24th Street SE.

BACKGROUND:

The private road known as 79th Avenue SE is a 20-foot-wide strip situated immediately west of the East 30 feet of Cavalero Hill Park, which the County has dedicated for public road, and which now appears on Assessor maps as 79th Avenue SE.

The 20-foot-wide private road known as 79th Avenue SE was created by a 1944 right-of-way agreement among George A. Tozer and Arlyn Tozer, J. Spencer Purdy and Janet S. Purdy, and L.W. Mathews Jr. and Lillian Mathews. Mathews owned the 20-foot road, but Purdy had been using the road to access what is now the Petersen property. The 1944 agreement conveyed title to Tozer, Purdy and Mathews jointly and provided that the strip *"shall become and forever remain a right-of-way, for the private use of all the parties hereto for ingress and egress to and from lands owned by them in the vicinity thereof, and shall in all respects be owned and shared equally by them."*

The Snohomish County Assessor divided the 20-foot private road into two tax accounts, one covering the west 3.5 feet of the north 646 feet and the full 20 feet south thereof, which has been taxed to Duskin (Parcel number **2905-2600-1010-00**). The remainder 16.5 feet of the north 646 feet is taxed with the Petersen parcel (Parcel number **2905-2600-1009-00**). It is unclear how these tax parcels were established, but according to preliminary commitment for title insurance Order 500055249 dated October 10, 2018,

issued by Chicago Title Insurance Company, the strip continues to be owned by Tozer, Purdy and Mathews, or their heirs.

Since the 1944 creation of this right of way, some property owners acquired easements to use the 79th Avenue SE private road because they were successors in interest to Mathews, Tozer or Purdy, some acquired rights by an easement established in a quiet title action, and some may have acquired prescriptive easements by their use of the easement. These interests may also have been extinguished for nonuse or for other legal reasons. This condemnation action is necessary to clarify what rights remain, what rights have been lost, and the value, if any, of those rights that remain.

APPLICABLE CITY POLICIES:

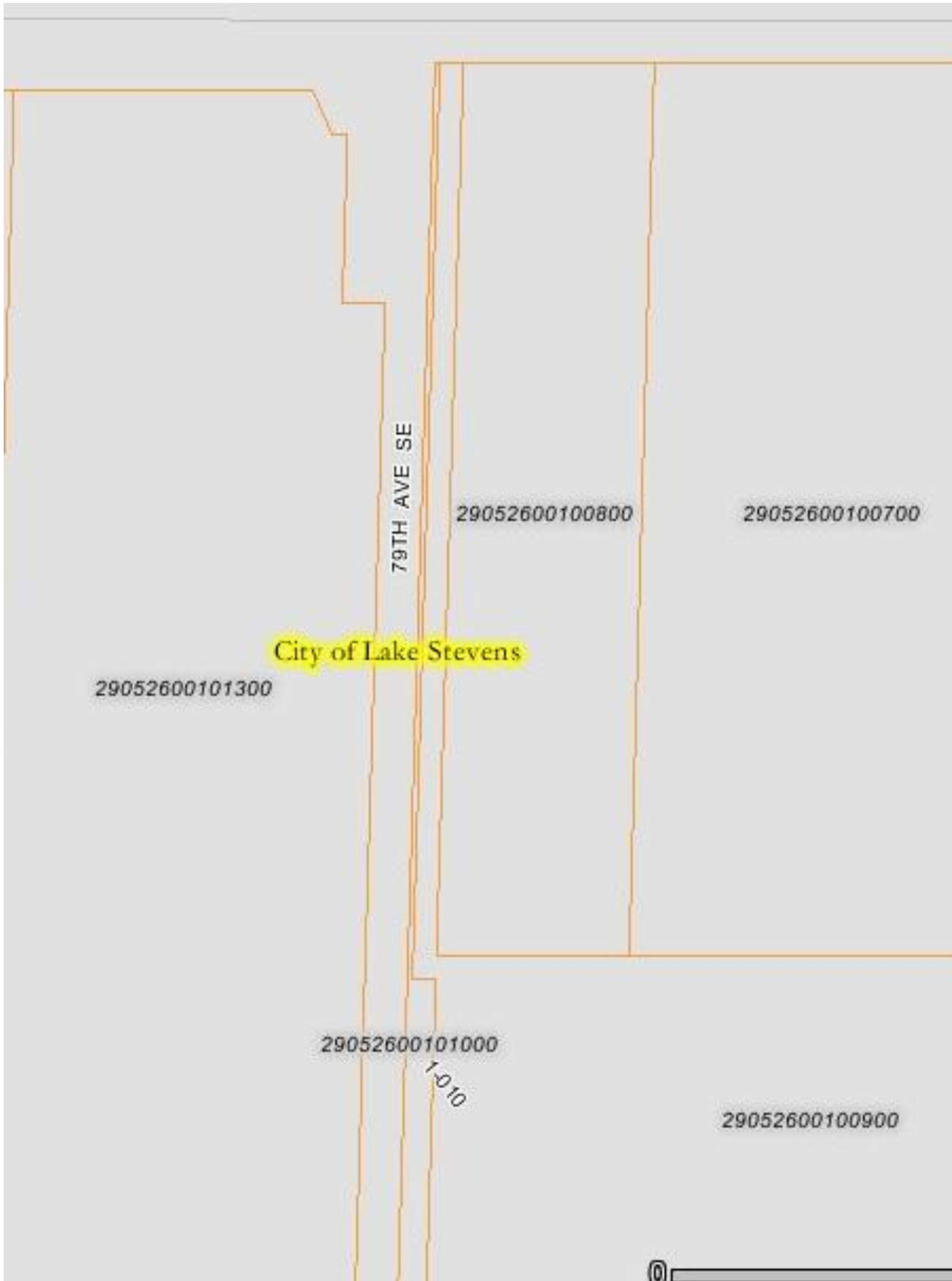
BUDGET IMPACT: Acquisition cost will be funded by Traffic Impact Fee TIZ3.

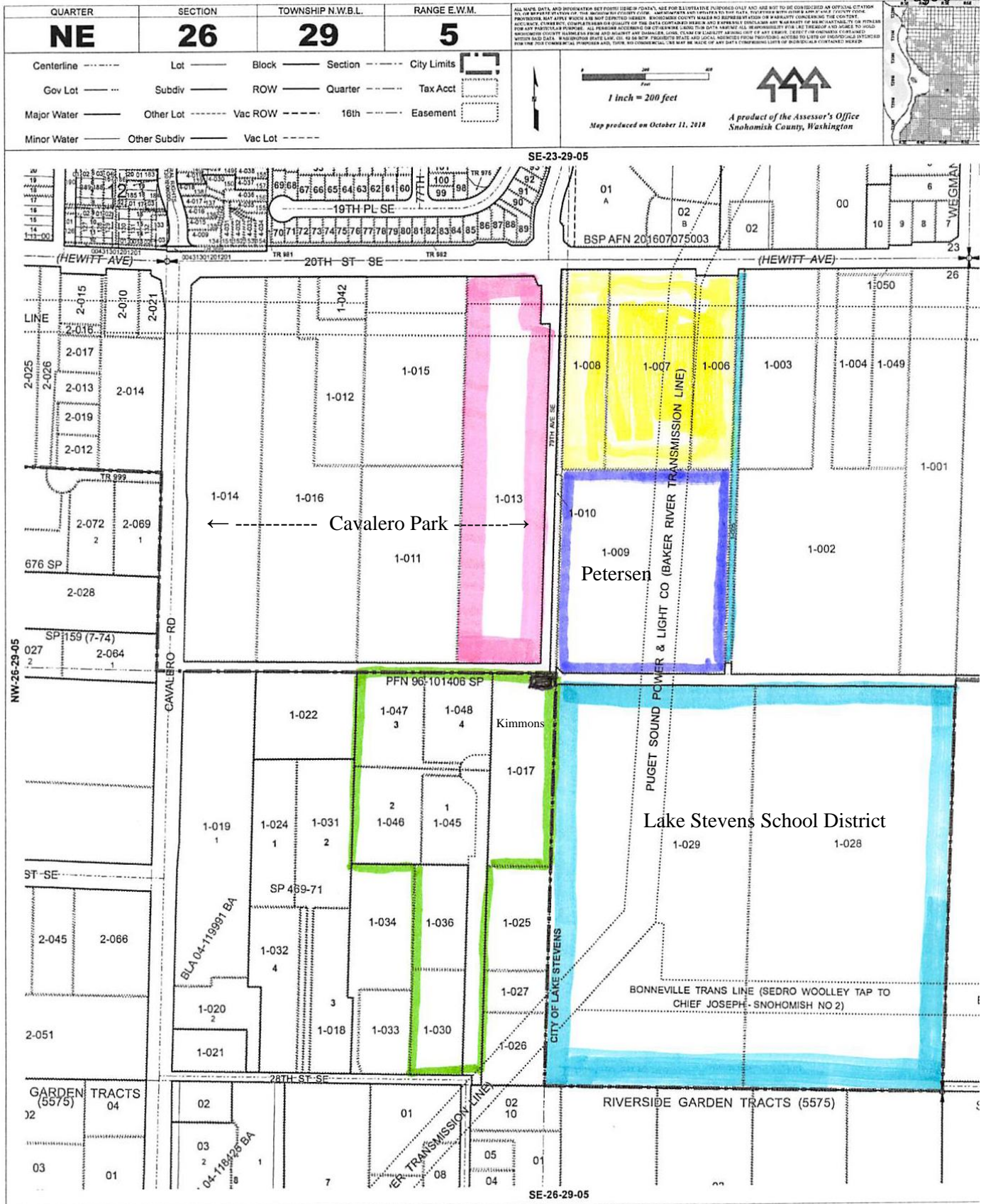
ATTACHMENTS:

- ▶ A: Snohomish County Assessor Map showing parcel numbers
- ▶ B: Section maps showing easement interests
- ▶ C: 79th Ave SE typical road section
- ▶ D: Ordinance 1059

ATTACHMENT A

Tax parcel 290526-001-010-00 (taxed to Duskin) and 290526-001-009 which includes a portion of the 79th Avenue SE private road.





- Park Property/easement thru Mathews
- Properties with potential prescriptive easements
- Easement acquired by Quiet Title Action
- Petersen Property/easement thru Purdy
- LSSD Property/easement thru Tozer
- Portion of Kimmons take for 24th St SE corner

CITY OF LAKE STEVENS
LAKE STEVENS, WASHINGTON

ORDINANCE NO. 1059

AN ORDINANCE OF THE CITY OF LAKE STEVENS, WASHINGTON, AUTHORIZING THE CONDEMNATION, APPROPRIATION, TAKING AND DAMAGING OF LAND AND OTHER PROPERTY WITH ALL NECESSARY APPURTENANCES AND PROPERTY RIGHTS NECESSARY FOR INGRESS AND EGRESS TOGETHER WITH ALL RIGHTS APPURTENANT THERETO, INCLUDING ACCESS WHERE APPLICABLE, FOR PURPOSES OF WIDENING 79th AVENUE S.E. BY AN ADDITIONAL 20 FEET AND EXTENDING 79th BY AN ADDITIONAL 30 FEET. THIS ORDINANCE DIRECTS THE CITY ATTORNEY, OR DESIGNEE, TO PROSECUTE THE APPROPRIATE LEGAL PROCEEDINGS, TOGETHER WITH THE AUTHORITY TO ENTER INTO SETTLEMENTS, STIPULATIONS OR OTHER AGREEMENTS; AND ACKNOWLEDGES A PORTION OF THE REAL PROPERTY AFFECTED IS LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF LAKE STEVENS, AND A PORTION IS LOCATED ADJACENT TO THE BOUNDARIES OF THE CITY OF LAKE STEVENS, IN SNOHOMISH COUNTY, WASHINGTON; AUTHORIZING PAYMENT THEREOF FROM THE CITY'S GENERAL FUND OR FROM SUCH OTHER MONIES THAT THE CITY MAY HAVE AVAILABLE OR ATTAIN FOR THE ACQUISITION; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lake Stevens (hereinafter the "City") finds as follows:

1. Public safety, convenience, use and necessity demand the widening of 79th Avenue S.E. from 60 feet to 80 feet over the northerly 200 feet thereof, and from 30 feet to 50 feet over the remaining portion of existing 79th to its termination at the corner of proposed 24th Street S.E., and the extension of the entire 50-foot width of 79th to the South by an additional 30 feet to provide for construction of the intersection with 24th Street S.E., including construction of curbs, gutters and sidewalks, to meet the requirements of school bus access to Cavelero Mid High School and to provide improved and expanded access to Cavalero Hill Park.

2. The City has conducted engineering studies and has determined that it will be necessary to acquire property for the street widening and extension as more specifically described in **EXHIBITS A and B** attached hereto and incorporated herein by this reference.

3. The entire cost of the acquisitions provided by this ordinance shall be paid by the following funds of the City:

Traffic Impact Fee – TIZ3

or such other funds as may be provided by law.

4. The City may be unable to agree with certain property owners upon the compensation to be paid for said properties.

5. The City has authority pursuant to RCW Chapter 8.12 to acquire, if necessary, title to real property for public purposes. The widening, extension and improvement of 79th Avenue S.E. is a public purpose.

6. Notice of the planned final action authorizing the condemnation of the property described in **EXHIBITS A** and **B** has been given to the owners of said property and published in the Everett Herald in accordance with the provisions of RCW 8.25.290.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE STEVENS,
WASHINGTON, DO ORDAIN AS FOLLOWS:

1. The City is hereby authorized to condemn, appropriate, take and damage the real property described in **EXHIBITS A** and **B** hereto, together with all rights appurtenant thereto, including access where applicable.

2. The use of the property described in **EXHIBITS A** and **B** is for widening 79th Avenue S.E. from 60 feet to 80 feet over the northerly 200 feet thereof, and from 30 feet to 50 feet over the remaining portion of existing 79th to its termination at the corner of proposed 24th Street S.E., and for the extension of the entire 50-foot width of 79th to the South by an additional 30 feet to provide for construction of the intersection with 24th Street S.E., including construction of curbs, gutters and sidewalks, to meet the requirements of school bus access to Cavelero Mid High School and to provide improved and expanded access to Cavalero Hill Park, which is a permanent public use and is reasonably necessary for the purposes for which it is sought.

3. All lands, rights, privileges and other property lying within the limits of the land described in **EXHIBITS A** and **B** are hereby authorized to be condemned, appropriated, taken and damaged for the purpose of for widening 79th Avenue S.E. from 60 feet to 80 feet over the northerly 200 feet thereof, and from 30 feet to 50 feet over the remaining portion of existing 79th to its termination at the corner of proposed 24th Street S.E., and for the extension of the entire 50-foot width of 79th to the South by an additional 30 feet to provide for construction of the intersection with 24th Street S.E., including construction of curbs, gutters and sidewalks. All lands, rights, privileges and other properties are to be taken, damaged and appropriated only after just compensation has been made, or paid into the registry of the court for the owners thereof in the manner provided by law. The City is further authorized to amend the legal descriptions contained in **EXHIBITS A** and **B** as may be necessary and appropriate to meet requirements of the project.

4. The cost of the acquisition provided for by this ordinance shall be paid by the following funds of the City:

Traffic Impact Fee – TIZ3

or such other funds as may be provided by law.

5. The City Attorney, or designee, should be and hereby is authorized and directed to begin and prosecute the actions and proceedings in a manner provided by law to carry out the provisions of this ordinance, and to enter into settlements to mitigate damages.

PASSED by the City Council and APPROVED by the Mayor this 25th day of June, 2019.

John Spencer, Mayor

ATTEST:

Kathy Pugh, City Clerk

APPROVED AS TO FORM:

First Reading: June 25, 2019
Second and Final Reading: October 1, 2019
Date of Publication:_____
Effective Date:_____

Greg Rubstello, City Attorney

EXHIBITS A LEGAL DESCRIPTIONS

PARCEL A:

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 29 NORTH, RANGE 5 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER;
THENCE WEST 16.5 FEET;
THENCE SOUTH 30 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 646.5 FEET;
THENCE EAST 16.5 FEET TO THE EAST LINE OF SAID SUBDIVISION;
THENCE SOUTH TO THE SOUTH LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER;
THENCE WEST 20 FEET;
THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION TO A POINT WEST OF THE
TRUE POINT OF BEGINNING;
THENCE EAST TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

SNOHOMISH COUNTY TAX PARCEL 290526-001-010-00

PARCEL B:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST
QUARTER OF SECTION 26, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M.;
THENCE SOUTH 676.5 FEET;
THENCE WEST 16.5 FEET;
THENCE NORTH 676.5 FEET;
THENCE EAST 16.5 FEET TO THE POINT OF BEGINNING;

EXCEPT THE NORTH 30 FEET FOR COUNTY ROAD;

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

PORTION OF SNOHOMISH COUNTY TAX PARCEL 290526-001-009-00

Chicago Title Insurance Company Preliminary Commitment for Title Insurance No. 500055249 discloses that title to the above-described property is vested in the following persons, or their heirs and devisees:

George A. Tozer and Arlyn Tozer, husband and wife, Janet S. Purdy, as her separate estate and Leander W. Mathews, Jr. and Lillian Mathews, husband and wife

subject to easement interests of other parties.

**EXHIBIT B-1
LEGAL DESCRIPTION**

The Northerly 30.00 feet of the Easterly 50.00 feet of the following-described property:

That portion of Section 26, Township 29 North, Range 5 East, W.M., described as follows:

The East 200 feet of the East half of the Southwest quarter of the Northeast quarter;

EXCEPT the South 690 feet thereof;

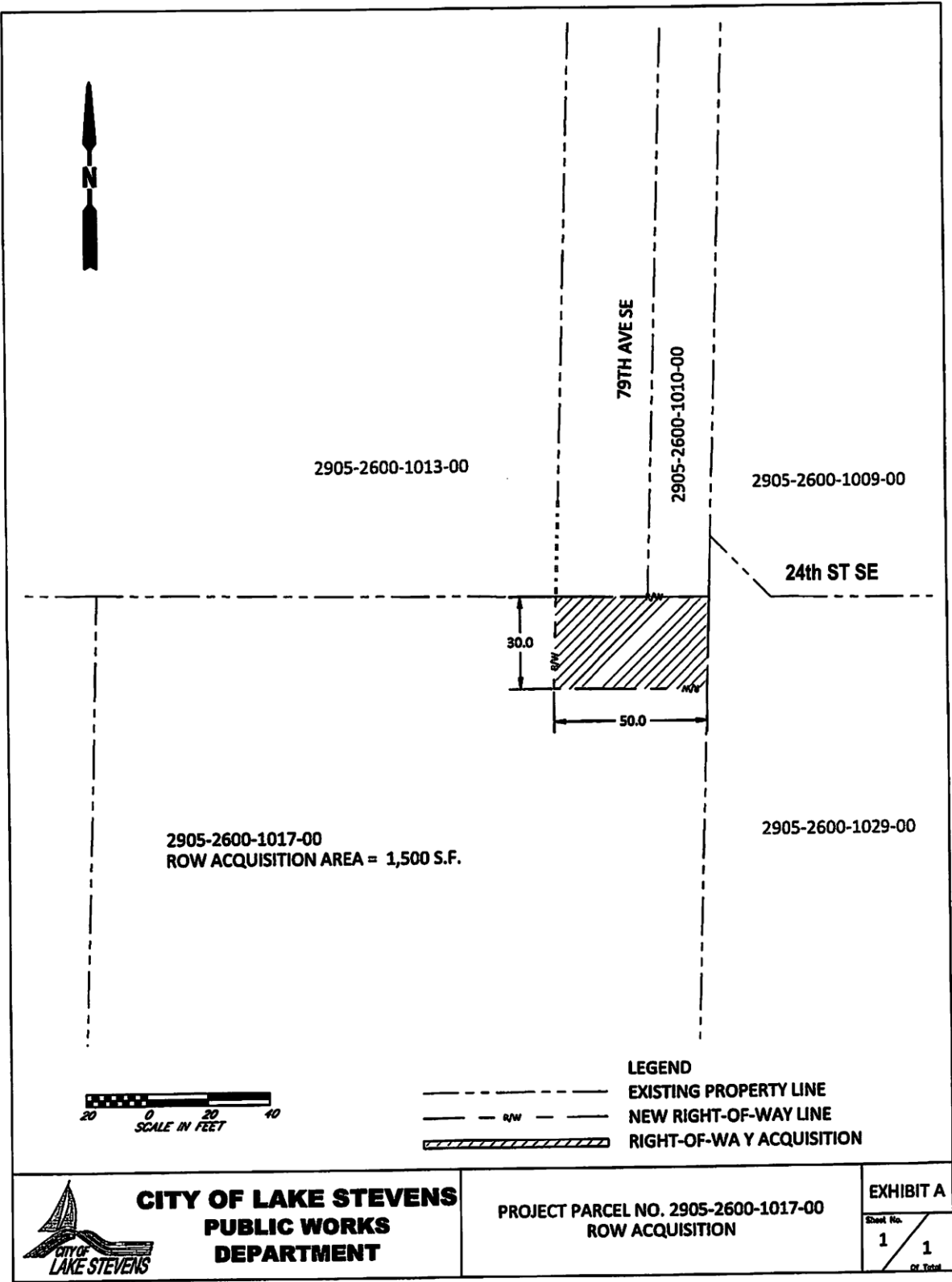
Situate in the County of Snohomish, State of Washington.

Chicago Title Insurance Company Preliminary Commitment for Title Insurance No. 500076924 discloses that title to the above-described property is vested in the following persons:

Jon G. Kimmons and Marjory A. Kimmons, husband and wife

subject to easement interests of other parties.

EXHIBIT B-2



P:\Public Works\Projects\Active Projects\16011 - Candero Park - State Park\2017\2018 CAD Files\79TH-Redesigning LAYOUTS.11/1/2018 10:51:51 AM.dwg