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September 23, 2011

Clark County Courthouse
P.O. Box 5000
1200 Franklin Street
Vancouver, WA 98666-5000

Re: Marshack v Kellogg et al
Clark County Case No: 08 2 03116 4

Dear Clerk:

Please find enclosed the following:

1. Citation for October 14, 2011 Judge Wulle docket
2. Motion and Declaration with Amended Complaint
3. Notice card.

Best Regards,

DANIEL C. LORENZ
Attorney at Law

Daniel C. Lorenz

DCL:blm
cc: Kathy Marshack
Allison Chinn
ccc: Judge Wulle (cover only)
C:\Users\Public\Clients\MarshackCity\J.trCourt92311.wpd

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THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

KATHY MARSHACK
Plaintiff
v
CITY OF VANCOUVER a Washington
Municipal Corporation
Defendant

No. 018-2-03116-4

CITATION

TO: THE CLERK OF THE COURT and to Allison Chinn

PLEASE TAKE NOTICE that the following matter will be brought before the Court for Hearing:

MATTER: MOTION TO AMEND COMPLAINT
TIME: 9:00 a.m.
DATE: October 14, 2011
JUDGE: John Wulle
Judge of the Superior Court for Clark County Washington

Dated: 9/23/11


DANIEL LORENZ, WSBA #14688
Attorney for Plaintiff

Copy of this Citation sent US First Class Postal Mail

Lynn Miner, Legal Assistant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

KATHY J. MARSHACK

Plaintiff,

v.

CITY OF VANCOUVER, a Washington
municipal corporation,

Defendant.

NO. 08 2 03116 4
MOTION AND DECLARATION
FOR THE FILING OF AMENDED
COMPLAINT

TO Allison Chinn, Counsel for the City of Vancouver

MOTION

COMES NOW Plaintiff and moves the court for an Order allowing the filing of an Amended Complaint, a copy of which is attached hereto, as Exhibit "A".

DECLARATION OF COUNSEL

This application is made pursuant to CR 13A. Although no depositions have occurred in this matter to date, the parties have exchanged thousands of pages of discovery. In addition, settlement has been reached with all individual defendants, and only the city of Vancouver remains as an unsettled party.

DECLARATION IN SUPPORT OF MOTION - 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

KATHY J. MARSHACK)

Plaintiff,)

vs.)

CITY OF VANCOUVER, a Washington)
municipal corporation.)

Defendant.)

NO. 08-2-03116-4

AMENDED COMPLAINT

Plaintiff, Kathy J. Marshack, alleges as follows:

1. Kathy J. Marshack ("Marshack") is single and lives in Clark County.
2. At all times material hereto the City of Vancouver (the "City") was and is a first class city in the State of Washington, located in Clark County.

FACTS

A. General Statement of Facts

3. Marshack owns parcels of property commonly known as 14237 SE Evergreen Hwy, Vancouver, Washington 98683 (the "Property"). Plaintiff first acquired an interest in the property in 1984, at a time when the property was not yet part of the City of Vancouver.

AMENDED COMPLAINT - 1

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- 1 4. Joseph and Julianne Leas own parcels of property, adjacent to the Property, commonly known
2 as 14209 SE Evergreen Hwy, Vancouver, Washington, 98683, which they purchased in
3 approximately March, 2004.
- 4 5. Mary Kellogg was the resident of property immediately to the south of Marshack, known as
5 14301 SE Evergreen Highway, Vancouver, Washington, 98683 and Don Morris and Melanie
6 Moonie were her son and daughter-in-law.
- 7 6. The Steamboat Landing Homeowners Association (hereinafter SBL) maintains a development
8 to the west of the Leas' property. Don Morris and Melanie Moonie reside there known as
9 14015 SE 35th Loop, Vancouver, Washington, 98683.
- 10 7. In addition to being able to travel along the Old Camas Highway, including between the two
11 parcels owned by the Leas. Marshack's ownership of the Property includes an easement to
12 travel southward to the Columbia River, across what is commonly known as "the lane", from
13 the Old Camas Highway. The "lane" is a 30' wide strip of land straddling the property owned
14 by the Mary Kellogg Trust and that owned by the Steamboat Landing Homeowners Assoc.
- 15 8. After the Leas moved in, a conflict developed between Plaintiff and the Leas. The City
16 actively sided with the Leas through its Code Enforcement and Police Departments, and in the
17 issuance of a gate permit designed to block an easement without notice to
18 Marshack. Marshack believes the City also actively sided with Kellogg, Morris and Mooney
19 through its Code Enforcement and Police Departments.
- 20 9. Plaintiff Kathy Marshack was previously married to Howard Marshack, an attorney at law
21 practicing in the City of Vancouver. In 2002 divorce proceedings were initiated between
22 plaintiff and Howard Marshack. During the course of the proceedings, a dispute arose
23 regarding personal property and an incident occurred at the law office of Howard Marshack,
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1 which resulted in the City of Vancouver initiating a criminal prosecution against Plaintiff
2 Marshack.

3 10. During the pendency of the divorce proceedings, the City, through a number of its agents and
4 employees, began to treat plaintiff differently than other citizens. These actions were initiated
5 by Josephine Townsend, who was then serving as Assistant City prosecutor and acting within
6 the course and scope of her employment.

7 11. In September 2004, plaintiff appealed to the City Ombudsmen who was then Jim Jacks, for
8 assistance in dealing with the City. Jim Jacks, rather than performing the functions of his
9 office as described to the general public, including plaintiff, assumed an advocacy position
10 contrary to that of plaintiff, and actively joined with Josephine Townsend and others against
11 plaintiff. Jim Jacks issued a report, and published it, asserting that plaintiff was a "functional
12 sociopath", was not qualified to act in her professional capacity as a psychologist and has
13 explosive anger management problems. Those assertions have no factual basis.

14 12. Thereafter, officials of the City of Vancouver availed themselves of every opportunity to act
15 contrary to the interests of plaintiff, and to side with third parties and against plaintiff as
16 circumstances permitted.

17 13. In spite of the obvious baseless and harassing nature of complaints from the Leas, Kellogg,
18 Morris, Mooney and SBI. against Marshack, the City actively participated in harassment of
19 Marshack by eagerly and aggressively investigating all alleged code violations and criminal
20 conduct, often in a reckless manner, including arresting her, charging her and prosecuting her
21 on charges that the City knew to be baseless.
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- 1 14. The City also failed to respond to legitimate complaints of Marshack regarding actions of the
2 Leas, Kellogg, Morris, Mooney, members of the Steamboat Landing community (SBL) and
3 others.
- 4 15. With the encouragement of the City, SBL placed a "WANTED" poster of Marshack around
5 the community and threatened her and her family with arrest for use of the easement. The
6 poster included Marshack's photograph with the admonition to call the police immediately if
7 she is seen in the area of the easement. The poster also stated that SBL had a restraining order
8 which it did not.
- 9 16. On May 12, 2006, Morris and Mooney physically assaulted Marshack's minor daughter and a
10 minor friend during their use of the easement, threatened them with arrest and menaced them
11 with his riding lawnmower. The City failed to take any action despite the fact that a report of
12 the incident was filed by Officer Calhoun. Marshack had to insist to the Chief of Police that
13 Calhoun re-write his report because in his first report Calhoun wrote that there was no cause
14 since Marshack's daughter was trespassing.
- 15 17. In June, 2006, with the support of the Vancouver Police Department and Code Enforcement,
16 Morris and members of the SBL homeowner's association installed a fence along a portion of
17 the easement in order to obstruct Marshack's use and maintained it even after its removal was
18 directed by the court, and the US Army Corps of Engineers. Vancouver Police Lieutenant
19 Dave King and Code Enforcement Officer Richard Landis described the fence as a "police
20 line" for the protection of SBL against Marshack and authorized this police line for two years.
- 21 18. In June 2006, Morris also pounded rebar stakes with "surveyor's caps" into the easement,
22 across the beach and into the Columbia River. The Vancouver Police threatened Marshack,
23 her family and guests, with arrest for trespass if they continued to use the portion of the
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1 easement beyond the fence and the putative survey rebar stakes. The Police made these
2 threats even after the Clark County Superior Court had legally established Marshack's right to
3 use the easement, and after Morris was ordered to cease harassment of her use of the
4 easement.

5 19. On July 4, 2006, Morris and Mooney accosted and threatened Marshack, her family and
6 guests in their use of the easement, assaulting one of Marshack's guests with a burning stick
7 and assaulting Marshack and biting her on the hand.

8 20. On July 4, 2006, the Police arrested Marshack for assault based on Morris and Mooney's false
9 report of events and in spite of contradictory reports by Marshack, her family and guests.

10 21. The City continued its prosecution of Marshack even when it appeared that the evidence
11 would not establish the elements of the case. Marshack incurred significant costs and distress
12 as a result of the prosecution.

13 22. In a January 1, 2010 e-mail to "Kathy Marshack; jjacks@mackaysposito.com; David
14 Nierenberg; Jollota, Pat external; royce.pollard@vancouver.wa.us; Gathe, Ted; Leavitt, Tim;
15 Smith, Larry; Jollota, Pat; pat.mcdonnell@vancouver.wa.us; Harris, Jeanne; Stewart, Jeanne;
16 Dantonkovich@aol.com; debbie@debbiepeterson.org" with the "Subject" line: "Will Jim
17 Jacks step up and do the right thing?" and "Importance" marked "High," City Councilman Pat
18 Campbell stated as follows:
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20
21 *"Folks,*

22 *I hadn't seen the purported Jim Jacks correspondence.*

23 *I've worked with sociopaths (the antisocial personality disorder) for years in corrections,*
24 *Adult Services (DSHS), and the Department of Institutions (Western State Hospital). I cannot*
25 *believe any professional person would have possibly diagnosed Dr. Marshack as a*
"functional sociopath."

1 *I would like to see the alleged professional's report or listen to the transcript.*
2 *This link will give you an idea of how serious and socially debilitating this condition is*
3 *http://www.angelfire.com/zine2/narcissism/antisocial_sociopath_psychopath.html*

4 *We need to get this issue addressed.*

5 *- Pat Campbell, Vancouver City Councilman "*

6 See Marshack Discovery #1303.

7 23. In spite of Council Member Campbell's request for proof of Townsend's and Jacks'
8 allegations, the City Attorney's office did not respond.

9 24. Marshack resolved her claims against all parties except the City. From here forward the other
10 parties will be referred to collectively as the "Dismissed Defendants."

11 **B. Serial Statement of Specific Facts With Source References**

12 25. By 2004 the City began negotiations with the BNSF railroad to establish a quiet zone near
13 Marshack's property. The main railroad line running east from the City lies immediately
14 between the Evergreen Highway and Marshack's residence. Marshack's access across the
15 railroad tracks is by a private easement from BNSF at 144th street. Since she purchased the
16 property in 1984, Marshack has run a duly licensed, small office counseling service out of her
17 home, which places her property in the commercial category for purposes of determining the
18 degree and expense of safety measures needed to secure a public crossing. Therefore, the
19 operation of Marshack's business creates a potential \$500,000 obstacle to implementation of
20 the commercial crossing sought by both the City and the other Dismissed Defendants as a
21 precondition to establishing the Quiet Zone they also both wanted. For example, in an email
22 string between City employees Pat Owen, Richard Landis and Bill Whitcomb, Whitcomb
23 indicates that the City and BNSF have for sometime been looking at a change a the private
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1 crossing in order to implement a quiet zone. See City Bates Marshack Citizen Advocate
2 Office 389-391.

3 26. The City and the Dismissed Defendant's preferred solution was to force Marshack to move
4 her business, or residence, or both, elsewhere. They took the following actions to accomplish
5 these goals. There are several City employees who engaged in outrageous and damaging
6 conduct against Marshack. This amended complaint will sequentially summarize the City
7 employee actions, with citation to documents proving these allegations, supported by an
8 affidavit.

9 27. On February 11, 2004 Marshack neighbor Jody Campbell filed a complaint against Marshack
10 claiming that Marshack did not have a home occupation business permit and that she
11 improperly had an employee on the premises. City Code Enforcement Officer Dan Jones
12 investigated and cleared Marshack, who has had a home occupation permit since 1997. See
13 City Bates Code Enforcement #1391, 008, 000008, 9 , 10, 11.

14 28. Landis filed a complaint with BNSF regarding Marshack's of the easement. He claimed that
15 she was using the crossing illegally for her business. He so noted this complaint in the letter
16 to attorney Mike Wynne in July 2004.

17 29. As a result of this complaint Marshack participated in a conference call with Landis, Asst.
18 City Attorney Jim McNamara, BNSF attorney Shana Druffner, BNSF Safety Manager Steve
19 Mills and attorneys Mike Wynne and Dan Lorenz, and Marshack. The suggestion was made
20 that Marshack needed a permit to use the crossing so she would not be trespassing. BNSF
21 tried to argue that the deed wouldn't hold up in Court but they "offered" to give her a permit
22 free of charge if she would just apply for it. At the City's suggestion BNSF wanted Marshack
23 to sign an agreement accepting full liability at the crossing and buying insurance from them.
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1 Marshack refused to sign this agreement. Landis and Isely repeatedly threatened to take away
2 her home occupation permit for her failure to be cooperative with BNSF. Landis wrote emails
3 that the "City has been extremely patient with Dr. Marshack but we may have no choice but
4 to revoke her home occupation permit...". When BNSF offered Marshack the crossing
5 permit, Landis burst out "But I thought you wanted me to shut down all of the businesses
6 south of the tracks!"

7
8 30. Landis was successful in shutting down home businesses south of the train tracks such as
9 Gentry's Landing, a 50 year old marine repair business. The Columbian ran a story about the
10 closing of the business as a famous landmark.

11 31. As the conversation progressed, Landis again blurted out that "Marshack's house used to be a
12 chicken coop!" Her house was actually built in 1953 by Lester Kellogg. It is a custom built
13 ranch style three bedroom home, made of brick with many "modern" features for the time,
14 such as hot water radiant heating, two fireplaces, and a double car garage.

15 32. In March or April 2004 neighbors Joseph and Julianne Leas moved into the house next door
16 to Marshack. Almost immediately they began filing complaints regarding Marshack's home
17 based business and also claimed that she trespassed on a shared easement to the Columbia
18 River. As a result of these complaints, the City began the process to revoke Marshack's
19 business permit. See City Bates Marshack Box 1238, #0002550, 001661.

20 33. The Leas engaged in a variety of harassing and stalking behaviors and were found guilty of
21 Contempt of Court for these actions. They have settled their portion of this case. See Superior
22 Court file #04-2-04611-8.

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24 34. In May 2004 the City filed a grievance against Marshack with Burlington Northern Railway
25 regarding her use of the train crossing near her home. This led to two years of problems for

1 Marshack with BNSF as the City and BNSF tried to make Marshack liable for any damages
2 that arise from train crossing incidents. See City Bates Marshack Box 1238 #000094,
3 002159-002175.

4 35. On May 21, 2004 and on behalf of Richard Landis, Dan Jones of Code Enforcement sent an
5 email to City Council Member Pat Jollota referencing Marshack's deed and title report. He
6 asked for information regarding the location of the Steamboat Landing that is referenced in
7 Marshack's deed. See City Marshack Box 1639, Code Enforcement #289, Box 1238, #01393.

8 36. On May 24, 2004 the City granted a gate permit to the Leas and Kellogg, which blocked the
9 easement as defined in Marshack's deed and title report. See City Bates Marshack Box 1238,
10 #00727-00728.

11 37. In June 2004 Don Morris and Melanie Mooney moved into the SBL section of the
12 neighborhood and began a series of harassing, stalking, and assaultive behaviors towards
13 Marshack. They were found guilty of Contempt of Court for these behaviors. See Superior
14 Court file #04-2-04611-8.

15 38. In a July 14, 2004 letter from Richard Landis to Marshack attorney Mike Wynne, Landis
16 stated that the City intended to proceed with revocation of Marshack's home occupation
17 permit. Landis added that Marshack's easement rights were "vague" and that she was
18 trespassing when she crossed the road by her neighbors, the Leas. Landis disclosed that he
19 filed a complaint against Marshack with BNSF. Finally Landis claimed that Marshack was
20 untruthful about where her children attended school. See City Bates Citizen Advocate,
21 #0082, Marshack Box 1238, #001366, Marshack Loose Documents #000018, Marshack City
22 Code Enforcement #0040.
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- 1 39. On August 2, 2004 Marshack sent a letter to her clients advising them of the dispute and
2 offering them protection from neighbor harassment. See City Bates Marshack Citizen
3 Advocate #000045.
- 4 40. On August 18, 2004 the City reissued the gate permit to Kellogg and Leas in spite of
5 Marshack's objections. See Leas Bates #1220-1.
- 6 41. On August 20, 2004 Zach Stoumbos, attorney for neighbors Larry and Mary Jacob, who own
7 property next to Marshack along the Old Camas Highway, and along with other neighbors
8 who reside to the north of Evergreen Highway, were also seeking confirmation of their right
9 to travel over the easement to the Columbia River, wrote a letter to Joseph and Julianne Leas
10 advising them of his client's rights to the easement and that the gate blocked these rights. See
11 City Bates Marshack Code -CDE 2004-00204-000045, Marshack Code Enforcement
12 #000050, 000051.
- 13 42. On August 25, 2004 Landis called Marshack neighbor Chris Bear regarding her rights to the
14 easement to the Columbia River. She verified her rights and suggested the dispute be
15 mediated by City Mediation services. See City Bates Marshack City Code Enforcement
16 #00009.
- 17 43. In an August 30, 2004 letter, Marshack wrote to her neighbor Kellogg asking for her help in
18 clearing up the dispute with new neighbors Leas regarding Marshack's easement rights. See
19 Leas Bates 1023-1024.
- 20 44. An August 31, 2004 letter from the City to Steve Mills of BNSF explained that the City
21 would not be responsible for damages or injuries at the 144th train crossing to Marshack's
22 property. See City Bates Marshack- Code -CDE 2004-00204 Staff Report - 000276,
23 Marshack Code Enforcement #000453.
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- 1 45. A September 1, 2004 e-mail from City employee Pat Owen to City employee Richard Landis
2 disclosed Marshack's easements. See City Bates Marshack Emails #000796.
- 3 46. A September 3, 2004 Marshack e-mail to City employee Citizen Advocate Jim Jacks sought
4 help to ameliorate harassment by two other City employees, Code Enforcement official
5 Richard Landis and City Prosecutor Josephine Townsend. See City Bates Marshack Citizen
6 Advocate #000147.
- 7 47. On September 7, 2004 Jacks, without communicating with Marshack, forwarded Marshack's
8 e-mail to Landis and Townsend requesting their input. See City Bates Marshack Citizen
9 Advocate #045, 00037.
- 10 48. On September 7, 2004 Jacks e-mailed City Manager Pat McDonnell with the findings of his
11 investigation and calling the contents "factual information", stating that Marshack was a
12 "diagnosed Functional Sociopath" and "NOT" fit to practice psychology, among other false
13 statements that he claimed were testified to by Marshack's psychologist and/or in the Court
14 record. See City Bates Marshack Citizen Advocate #000040.
- 15 49. Between September 7 and 9, 2004 Jacks made notes as he investigated Marshack's September
16 3, 2004 complaint. Never once did he speak with Marshack or any of her named witnesses
17 before he sent his report to City Manager Pat McDonnell. See City Bates Marshack Citizen
18 Advocate #00042, 000425.
- 19 50. On September 9, 2004 Jacks e-mailed Code Enforcement official Landis and City Prosecutor
20 Townsend, sending them copies of the "diagnosed Functional Sociopath" report. Jacks
21 requested of Townsend and Landis that they not pass on the report. City Manager McDonnell
22 revealed in the e-mail string that he had forwarded the Jack's report to the Mayor and two City
23 Council Members. See City Bates Marshack Citizen Advocate #000031-34, 0031, 0046.
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- 1 51. On September 9, 2004 Kellogg and Leas filed a lawsuit against Marshack, challenging her
2 access easement. See Superior Court file #04-2-04611-8. Kellogg and Leas lost to Marshack
3 on Summary Judgment, at the trial, and this judgment was sustained upon appeal. Marshack's
4 deeded rights were consistently upheld.
- 5 52. On September 19, 2004 City Prosecutor Townsend sent a letter to Marshack attorney Dan
6 Lorenz, which threatened to revoke Marshack's diversion agreement, based on the complaints
7 by neighbors. See City Bates Marshack Citizen Advocate #000186.
- 8 53. On September 20, 2004 City Attorney Gathe sent an e-mail to Townsend and others regarding
9 his opinion on whether or not Townsend had the right to revoke Marshack's diversion
10 agreement. Most of this e-mail has been redacted by the City. By the end of September 2004
11 Townsend withdrew the revocation petition. See City Bates Marshack Citizen Advocate
12 #000188.
- 13 54. On October 4, 2004 e-mails between Marshack and BNSF show that the railroad had agreed
14 to authorize a permit for Marshack to use the train crossing at 144th, until it could also be
15 made available to the public. See City Bates Marshack Box 1238, #001525.
- 16 55. On October 5, 2004 Jim Jack's complaint log reveals that private citizen David Nieremberg
17 called Jacks and was told the "Story" about Marshack. See City Bates Marshack Citizen
18 Advocate #164.
- 19 56. A November 18, 2004 Vancouver police report alleges reckless driving by Marshack and an
20 attempt to hit neighbor Julianne Leas. See City Bates Marshack Box 1497, #00087089. Judge
21 Nichols dismissed the complaint as "baseless." Furthermore Judge Nichols warned plaintiff
22 that she was a "target" and to take witnesses with her when she left her home to use the
23 easements.
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- 1 57. A November 23, 2004 letter from Marshack attorney Mike Wynne to BNSF requests a permit
2 to use the 144th crossing, in spite of Marshack's exclusive deeded rights (attached is
3 Marshack's 1906 crossing deed). The City repeatedly made demand on Marshack for over a
4 year 2004-2005 that she obtain a permit from BNSF in order to reinstate Marshack's home
5 occupation permit. See Clausen Bates #0002. City Marshack Box 1238 #002135-002138.
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- 7 58. On January 10, 2005 Marshack attorney Mike Wynne wrote a letter to BNSF and City
8 Attorney Jim McNamara regarding a feasibility study the City was conducting about the
9 upgrade of the private crossing at 144th. As it turns out, this feasibility study was for the
10 purpose of establishing the Quiet Zone, planned for the length of track from SE 164th back to
11 SE 139th. See Bates Clausen #002, 00012-26, 00027. See the City's Website on the Train
12 Horn Noise Quiet Zone project. The feasibility study was completed and published February
13 5, 2005.
- 14 59. On January 13, 2005 City Attorney McNamara wrote that the City did not plan to upgrade the
15 crossing and would not require that Marshack maintain it as a requirement for her home
16 occupation permit. However, after this, Landis nevertheless continued for several days to e-
17 mail BNSF indicating that he would revoke Marshack's home occupation permit if she did
18 not sign an agreement with a commitment to maintain the crossing. See City Bates Marshack
19 Box 1238, #002210, Marshack Code Enforcement #000144-145, Marshack Box 1238
20 #001525.
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- 22 60. On February 2, 2005 Asst. City Attorney Charles Isely replaced Jim McNamara. In a letter to
23 Marshack's attorney, Isely agreed to restore her home occupation permit, provided she agreed
24 that the road and train crossing were private, and that she would accept the terms defined by
25 BNSF in the contract they sent to Marshack which required that she be wholly liable for

1 maintenance and accidents at the crossing.. See City Bates Marshack Code- CDE 2004-
2 00204 Staff Report – 00320, Marshack Code Enforcement #000497, Marshack Box 1238
3 #0001527.

- 4 61. On February 5, 2005 the City announced its first feasibility study for a Quiet Zone in East
5 County along the stretch of tracks by the Marshack property. The study did not include
6 upgrades at the private train crossing at 144th, and in fact makes no mention of this dangerous
7 old 1908 train crossing. See the City website on the Train Horn Noise Quiet Zone project.
8
- 9 62. On February 9, 2005 Asst. City Attorney Isely volunteered an opinion in a private lawsuit
10 regarding the neighborhood easement to access the Columbia River. In a letter of that date
11 from Isely to neighborhood attorney Stoumbos, Isely stated that the Old Camas Highway was
12 “never a public road.” Stoumbos responded on February 28, 2005 with attachments showing
13 that the Old Camas Highway was not only a public road, but also the first public road in Clark
14 County established by the Clark County Commissioners in 1852. See City Bates Marshack
15 Citizen Advocate #000224.
- 16 63. On March 1, 2005 the City continued to threaten Marshack about her home occupation
17 permit. However, Asst. City Attorney Charles Isely offered to stay prosecution provided
18 Marshack agreed to file for a new home occupation permit, which accepted the fact that the
19 road is private, and that the City is not liable for maintenance and damages at the 144th Ct.
20 train crossing. See City Bates CDE 2004-00204 Staff Report #000324, Marshack Code
21 Enforcement 000501, City Bates Marshack Box 1238 #000094, 002159-002175.
- 22
- 23 64. On March 16, 2005 the City finally granted Marshack a revised home occupation permit. The
24 limitations imposed on Marshack in that permit are not imposed upon other applicants under
25 the then present Code. One such limitation is that Marshack’s clients may not maneuver their

1 cars outside of Marshack's driveway and are not allowed to park on the private road. See
2 City Bates Marshack Box 1238 #00542, Marshack - Code-CDE 2004-00204 Staff Report
3 #000327.

4 65. On May 13, 2005 the City once again decided to pursue code enforcement action against
5 Marshack, this time over where she was allowed to park on her property. The established
6 City policy is that parking on a private road is not within its jurisdiction. Nevertheless, on
7 May 13, 2005 the City cited Marshack for improperly parking on a private road. See City
8 Bates Marshack Code Enforcement-Code CDE 2004-00204 Staff Report - #000331,
9 Marshack Code Enforcement #00508, Marshack Code CDE 2004-00204 Staff Report
10 #000333.
11

12 66. On May 27, 2005 Judge Nichols signed a preliminary injunction prohibiting all future
13 neighbor harassment of Marshack, her family and guests. Despite this injunction the
14 neighbors continued this harassment. See Clark County Superior Court -4-2-04611-8, #70.
15

16 67. On June 24, 2005 Marshack hired surveyor Nin Beseda to conduct a survey of the Old Camas
17 Highway. He confirmed that the portion of the road near Marshack's property (and the Leas,
18 Kellogg, Jacob and Campbell (now Lindsay) properties) that he examined has never been
19 vacated. See City Bates Marshack Box 1638 #00871.

20 68. On July 28, 2005 anonymous complaints were filed with the Washington State BAR
21 regarding the conduct of City Prosecutor Josephine Townsend. Although the complainants
22 were anonymous, the anonymous complainants offered Marshack's name to the BAR as
23 another victim of prosecutorial abuse by Townsend. The BAR asked Marshack to provide
24 information regarding alleged malicious prosecution by Townsend. On July 28, 2005
25

1 Marshack attorney Dan Lorenz sent a letter to the BAR, which is identified as Marshack
2 Discovery #1307-1310

3 69. On August 17, 2005 the City cited Marshack for allowing her employce to park her car on the
4 Marshack property. The City continued to allow her neighbors, the Leas and Campbell's to
5 park their cars on the same "private road" but cited Marshack. See City Bates Marshack -
6 Code - CDE 2005-00691 - 000005, Marshack - Code Enforcement - 000556, Marshack -
7 Code - CDE 2005-00691 - 000006.

8
9 70. On October 9, 2005 Officer Burgara of the Vancouver Police Department responded to an
10 assault by Howard and Susan Marshack against Kathy Marshack and her daughter Phoebe.
11 Officer Burgara recommended that Howard and Susan be arrested for Domestic Violence and
12 Assault IV due to the injuries to Marshack. However, no arrest was ever made. Marshack box
13 1238 000359-000366.

14 71. On December 12, 2005 Marshack wrote letters to City Attorney Ted Gathe and City
15 Ombudsmen Jim Jacks again asking for help with regard to harassment by Landis and Isely.
16 Nothing was done. See City Bates Marshack 1639 000121-123, Marshack Citizen Advocate
17 Office Additional Docs 000165-168.

18 72. On January 25, 2006 Code Enforcement official Landis sent an e-mail to several other city
19 employees stating that Columbian newspaper owner Scott Campbell had contacted City
20 Attorney Ted Gathe about his personal interest in the Old Camas Highway issue in an effort
21 to clarify the private or public nature of the road that cuts through his property (and the
22 properties of Marshack, Jacob and Leas). Marshack Citizen Advocate Office 000387.

23
24 73. During January and February 2006 Scott Campbell and his attorney met with City Attorney
25 Ted Gathe to learn how the City might vacate the Old Camas Highway, which runs through

1 the Campbell property. Marshack has a deeded right to use the Old Camas Highway for
2 access and has done so for 20 years. Also there are no documents showing that the old road
3 was ever vacated, which is consistent with the conclusion that the road is still a public right of
4 way. City officials advised Campbell of the history of the old road, although they denied its
5 existence when Marshack's attorneys inquired. See Campbell legal file. (See Campbell Bates
6 435-437, 478-499 for Campbell's discussions with City Attorney Ted Gathe, City Engineer
7 John Mannix, City Transportation Director Thayer Rorabaugh, Mayor Tim Leavitt). See
8 Campbell Bates 450-466 for the City's discussion that though there are no historic documents
9 showing the road was ever vacated, they have determined that it was the County's "wish" to
10 do so and therefore it is done.

11
12 74. On February 15, 2006 the City refused to consider evidence that Marshack's second driveway
13 is gravel. The City then ordered her to pave her original gravel 1953 driveway or cease
14 parking there, even though it is clear by the City's own codes that county properties prior to
15 annexation were grandfathered in regarding parking and driveway codes. In any case the new
16 codes for paving of driveways were not effective until 2004, thus grandfathering in all
17 existing properties built prior to 2004. CD- Code Enforcement, #000663, Marshack- Citizen
18 Advocate #000166, Marshack-Parking enforcement video Code enforcement, #00604,
19 Marshack - Code - CDE 2005-00691 - 000031, Marshack - Code Enforcement - 000582.

20
21 75. In 2006 the Steamboat Landing Home Owner's Association engaged in a series of harassment
22 activities against Marshack. It photographed her, chased her daughter off the easement, filed
23 false police reports, conspired with Don Morris to build a fence down the middle of the
24 easement and posted a photograph of Dr. Marshack on a wanted poster at its front gate. All
25 of this was with the full support of the City of Vancouver.

1 76. On May 3, 2006 Marshack wrote one of several letters to her neighbors at Steamboat Landing
2 (with copies to the City of Vancouver), asking them to stop the harassment and participate in
3 neighborhood mediation. Clausen discovery, # 927, 04-2-04611-8, #58, PLI 04-2-04611-8,
4 #61.

5 77. On May 13, 2006 husband and wife neighbors Morris and Mooney harassed Marshack's
6 daughter and a friend by encircling them on a riding lawnmower and grabbing them. The
7 police investigated and did nothing. Marshack 1497, #0031, VP 06-9327 #131-135,
8 Marshack- 1238, VPD ER, #00190, Marshack, Box 1238 VPD file,#000039, Marshack, Box
9 1238, VPD File #000058.

10 78. On May 19, 2006 Marshack e-mailed East Precinct Commander Rick Smith and asked for his
11 help in arranging mediation with her neighbors. Marshack- Box 1238m VPD #000094
12

13 79. During May through June 2006 there was a flurry of activity involving harassment by
14 residents at Steamboat Landing including threats against Marshack for trespassing,
15 (Marshack-VPD EPR #000152, Marshack VPD 000169-175, Marshack- VPD File , 000020,
16 assaults on Marshack and her family and frequent photographing of Marshack when she used
17 the easement. Marshack Box 1238, Citizen Advocate, 00274.

18 80. In addition Steamboat Landing resident Don Morris began secretly videotaping Marshack, her
19 family and guests. (Marshack-Code Enforcement, #000601-000603) Marshack sought help
20 from the VPD and City Prosecutor McClure. (Marshack-Citizen advocate,#000272 However,
21 the City continued to support Marshack's neighbors' ongoing harassment. (Marshack- 1238,
22 VPD ER, #00190 (Marshack- Animal Control Code Enforcement 001-0076, Marshack, VPD
23 #000160).
24
25

AMENDED COMPLAINT - 18

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1 81. On June 16, 2006 Ken Morris, nephew of Don Morris, began sending a series of threatening
2 e-mails to Marshack. (Marshack- Box 1497, #000064-#000069). He used a pseudonym and
3 routed the e-mails through several servers. The VPD refused to investigate Ken Morris' email
4 stalking. (Marshack, 1497, # 000129, VPD file 000030, Marshack, VPD File, 000045
5 Marshack 1238 VPFfile0004) Marshack had no alternative but to hire a private investigator.
6 The investigator gave his report to VPD and Ken Morris was arrested for the Gross
7 Misdemeanor of Cyber Stalking. He agreed to diversion. Marshack- VPD File, #00045-
8 00047.
9

10 82. On June 26, 2006 Ken Morris sent Marshack an e-mail that is particularly revealing in that it
11 refers to her as a "sociopath," (Marshack- Box 1497, #000064-#000069)the term first used in
12 the September 7, 2004 e-mail from Jim Jacks that Marshack believes is the genesis of the
13 otherwise inexplicable contempt directed at her by every level of City government and a wide
14 range of people outside of government to whom this stigma has also been transmitted. See
15 Marshack - E-mails 001-457.
16

17 83. On June 23 and 26, 2006 Don Morris once again sent petitions to Code Enforcement asking
18 the City to revoke Marshack's home occupation permit. The petition was signed by neighbors
19 Mary Kellogg, Joseph and Julianne Leas, Melanie Mooney, and Laurie Washburn (of SBL).
20 Included with the complaint were the 50 video clips Morris had taken of Marshack, her
21 family, her guests and her guest's cars. (City Box 1639, #378).
22

23 84. On June 28, 2006 Marshack sent several letters to City officials such as Prosecutor McClure,
24 City Attorney Ted Gathe, the VPD, the Mayor and others imploring them to help stop the
25 harassment. She sent copies of her deed, recent court orders upholding her deeded rights, and
copies of the hateful e-mails from Ken Morris. Not only was the City unresponsive to her

1 pleas, but worse the City continued to assist her neighbors with their harassment of her.

2 (Marshack- 1238, VPD ER, #00190 (Marshack- Animal Control Code Enforcement 001-
3 0076, Marshack, VPD #000160).

4 84. On June 30, 2006 SBL and Morris built a fence in the middle of the easement and into the
5 Columbia River. They posted no trespassing signs on the fence and on the beach with the
6 permission of VPD Commander Rick Smith, Lt. Dave King and Code Enforcement Officer
7 Richard Landis. (Clausen Discovery, #966-973 Marshack Emails- 000358-000359).

8
9 85. On July 3, 2006. Marshack wrote another letter of appeal to several City and County officials
10 imploring them to please stop the harassment. She reported the illegal fence and the threats
11 made against her by her neighbors. (Clausen discovery, #978-980).

12 86. On July 4, 2006 Marshack was falsely arrested when Mooney assaulted her and then lied to
13 the police. (Marshack, Box 1497, 00002-3 and 00051-00602).

14 87. On July 6, 2006 East Precinct Commander Rick Smith sent an e-mail to Marshack and copied
15 several police officers, including Lt. King and Prosecutor McClure. He told Marshack she is
16 not entitled to her easement rights and defined the easement according to Don Morris' fake
17 survey markers. Further, he stated that Ken Morris' e-mails were not a threat to Marshack,
18 since she has a website and should expect this type of conduct. (VPD file 000030).

19 88. On July 6, 2006 Richard Landis e-mailed Lt. King, asking him if he wanted to keep the SBL
20 fence as a police line. Landis stated that he has received another complaint from the
21 neighbors regarding Marshack (i.e. the secret Morris videos). Landis added that he had an
22 "extensive file on Kathy." (Marshack Citizen Advocate Office Additional Documents
23 000058).

24
25 89. On July 19, 2006 there are several references to the Wanted Poster that the SBL HOA posted

1 at its front gate. (SBLdiscovery 0020-21).

2 90. Between July 28 and 30, 2006 an e-mail string circulated among City employees Richard
3 Landis, Tammi Neblock, Chad Eiken and Asst. City Attorney Charles Isely. They discussed
4 a letter draft from Eiken to Marshack threatening to revoke her home occupation permit
5 because of recent complaints by neighbors. The complaints were the petition initiated by
6 Morris, Mooney, Washburn, Joseph Leas, Julianne Leas and Mary Kellogg and included the
7 secret videos taken by Don Morris. Isely approved the letter on July 30th with the comment,
8 "Good to go." (Marshack emails, 004634).

9
10 91. On July 31, 2006 Richard Landis recorded in his log "Received petition of violation of her
11 home occupation and complaints from neighbors and CDs showing counseling on the beach."
12 This complaint with the videos was hand delivered by Morris on June 26, 2006, a fact he
13 confirmed in his deposition. The letter from Morris is dated June 26, 2006 and includes a
14 hand written note to Landis from Morris indicating that he is enclosing the videos. Landis
15 withheld this evidence for a month until his notation in July 31, 2006, which was after the
16 City had already sent Marshack a warning letter. Ultimately Landis concealed the existence
17 of the videos until December 2006 when Morris testified in Court to their existence and that
18 he had given them to Landis and Isely. (Marshack. 1639 Code Enforcement , #000553, Leas
19 Discovery #1152).

20
21 92. On July 31, 2006 Chad Eiken sent the above referenced warning letter by FAX to Steve
22 Turner, the attorney for Kellogg and the Leas as indicated by the date and time stamp from
23 Turner's law office, Miller Nash. There was no cc on the letter indicating it was also sent to
24 the neighbor's attorney. Marshack did not receive the letter until August 2006. (Marshack-
25 Code Enforcement, complaint Kellogg 00005-00006, Leas 1152-1153).

- 1 93. On September 16, 2006 the SBL HOA minutes indicate that Melanie Mooney told that group
2 that she had a restraining order for SBL against Marshack. The President of the HOA also
3 noted that Richard Landis and the VPD authorized the wanted poster and the fence blocking
4 the easement. (Marshack- Code Enforcement, complaint Kellogg 00005-00006, Leas 1152-
5 1153).
- 6 94. On October 25, 2006 Ken Morris agreed to diversion before Judge Hagensen. Marshack was
7 not provided a protection order and was told by the City that she had to file for it herself.
8 Marshack- VPD File, #00045-00047.
- 9 95. In a November 28 through 29, 2006 e-mail string City employees, including Richard Landis,
10 Chad Eiken and Charles Isely wrote among themselves regarding Marshack attorney Lorenz'
11 subpoena for public records. In spite of Landis' July note that he had CDs of Marshack taken
12 by Don Morris, neither Landis, nor Eiken, nor Isely produced these videos when the subpoena
13 clearly asked for photographic, video and other electronic media. Marshack emails, 00070-)
14
- 15 96. On December 6, 2006 Isely hurriedly sent photos to Lorenz, after Don Morris testified in
16 Court that he had given videos to Landis. Isely admitted finding the videos on Landis' desk.
17 (Marshack, Box 1639, 00327).
- 18 97. On December 12, 2006, Therese Lavaloe, attorney for Marshack regarding criminal
19 prosecution matters sent a letter to Prosecutor McClure asking him to drop the charges against
20 Marshack, since Morris was improperly videotaping Marshack and Mooney admitted biting
21 Marshack on July 4, 2006. (Marshack Archive box 1497 000030).
- 22 98. On February 7, 2007, in spite of the evidence, Prosecutor McClure nevertheless took
23 Marshack to trial for assault. She was acquitted of all charges.
- 24 99. On February 28, 2007 Richard Landis again e-mailed East Precinct Commander Dave King
25

1 regarding the fence being allowed as a "police line." He indicated that the City would grant
2 SBL a permit to keep the fence even if it was not a police line. He also noted that the
3 Columbian was publishing a story about Marshack's arrest and trial. (Marshack, Citizen
4 Advocate #0059) The March 4, 2007 Columbian article made no mention of the abuse
5 Marshack suffered and that she was acquitted, only that she was arrested. This biased news
6 story also mentioned that Marshack's home was not worth the price it was listed for. (Leas
7 discovery, #1122-1123 Articles Columbian).

8
9 100. On March 5, 2007 Marshack filed a BAR complaint against Charles Isely for withholding
10 evidence when responding to the subpoena for public records request. He responded stating
11 that he had no idea there were videos used as the basis for the warning letter sent to Marshack.
12 He gave no explanation for why he did not ask for evidence that supported the alleged
13 violations (Marshack, Box 1639, #000020-#000215).

14 101. On March 14, 2007 the Columbian newspaper published another article implying that
15 Marshack was the troublesome party and failing to mention that she had won in Court many
16 times against the attacks of her neighbors and the City of Vancouver. Since Columbian
17 owner Scott Campbell was meeting privately with City officials about her, yet she had no
18 knowledge of these meetings, she could not possibly defend herself against them. Leas
19 discovery, #1126, See Campbell Bates 435-437, 478-499 for Campbell's discussions with
20 City Attorney Ted Gathe, City Engineer John Mannix, City Transportation Director Thayer
21 Rorabaugh, Mayor Tim Leavitt).

22
23 102. On March 22, 2007 a string of e-mails related to Marshack's complaint to the WA Dept.
24
25

1 of Ecology regarding the illegal fence erected by SBL and Morris. (Clausen discovery,
2 #185) Barbara Tope of that agency referred the complaint to Richard Landis. Landis denied
3 any violation, denied that it was a fence, and included the Columbian newspaper article as
4 evidence that Marshack was a nuisance. Based on this false information the State Dept. of
5 Ecology took no action. Marshack Citizen Advocate, #0000159-163
6

7 103. On March 23, 2007 a Quiet Title order was entered in favor of Marshack, thus upholding her
8 easement rights once again. In spite of this order the fence remained. OLF 04-2-04611-8,
9 #190.

10 104. On April 18, 2007 SBL board minutes again indicated that the VPD had authorized its fence
11 to block Marshack's access to her easement. SBL discovery, # 012.

12 105. On May 8, 2007 the US Army Corps of Engineers sent letters to Kellogg and SBL ordering
13 them to remove the fence because it was in violation of Federal law. In spite of this order the
14 fence was not removed and Landis and the VPD continued to encourage preservation of the
15 fence. Eventually the fence was removed later in 2008 by order of Judge Nichols. However,
16 Marshack had to bring a Contempt of Court action against the defendant to obtain this order.
17 Marshack Citizen Advocate office Additional Docs 000070, Marshack- Citizen
18 Advocate, #00063.
19

20 106. On May 26, 2007 the VPD investigated a report of a SBL resident threatening Marshack's
21 daughter with a shovel while the daughter legitimately used the easement. The police made
22 no arrest. Marshack PA files 000427-430.

23 107. On June 3, 2007 Morris verbally abused Marshack and threatened to kill her dog, while
24 Marshack was working in her own backyard, which borders the Kellogg property. Clausen
25 discovery, # 1003.

1 108. On June 22, 2007 Marshack, Leas, Kellogg, Morris and Mooney signed a stipulated
2 agreement forsaking all harassment. (P.L.F 04-02-04611-8, #210).

3 109. On June 23, 2007 Morris harassed Marshack by taking her picture as she pruned in her yard.
4 He walked within a few feet of Marshack and snapped the camera in her face. Marshack
5 VPD EPR. 00024.

6 110. On June 25, 2007 the Leas and Kellogg called the VPD regarding Marshack's pruning
7 claiming that she was trespassing to prune bushes in her own yard. Marshack, VPD
8 EPR,00024.

9 111. On June 26, 2007 SBL HOA minutes indicated that the VPD still authorized the fence. SBL
10 0012-13 and 0039.

11 112. On June 26, 2007 Marshack Attorney Lorenz wrote a letter to Lt. Dave King stating that the
12 VPD was interfering with Marshack's easement rights and improperly taking sides in a civil
13 dispute. Neither Lt. King nor any member of VPD responded to this letter. Clausen
14 discovery, #0511.

15 113. Throughout July 2007 Marshack was subjected to a variety of abuses by her neighbors.
16 Morris took photos of Marshack's guests as they used the easement. Morris planted a dozen
17 trees on the Marshack/Kellogg boundary to obscure Marshack's view of the river. Marshack
18 broke her foot by stumbling on the rocks and yard debris and holes dug into the easement by
19 Morris. Clausen discovery, #1004, Marshack Discovery,#000472.

20 114. On July 20, 2007 the SBL HOA minutes confirmed again that the VPD had authorized its
21 fence in spite of evidence that this was a denial of Marshack's rights. SBL Discovery, #0054

22 115. On July 22, 2007 Don Morris physically assaulted Marshack, while Melanie Mooney took
23
24
25

1 photographs of Marshack and her dog. Although Morris lied to the police about the incident
2 and the police made no arrest, Morris was found guilty of assault and fined in a civil action
3 Marshack had to file. Marshack Box 1238, #0200, Marshack VPD FPR, #000022 Marshack,
4 Box 1497, #00298, Marshack- #302-511.

5 116. On July 30, 2007 Don Morris filed a complaint against Marshack with Animal Control
6 regarding the police investigation of July 22, 2007. Marshack -Animal Control, #0012
7

8 117. On August 1, 2007 neighborhood attorney Zach Stoumbos wrote to City Attorney Ted Gathe
9 complaining that the VPD ignored the rights of his clients and enforced the law unequally
10 and hence unfairly. The police investigation of this incident was directed at Marshack when a
11 SBI resident complained that Marshack was using the easement. At the time Marshack was
12 in Portland and the woman using the easement was another easement holder and client of Mr.
13 Stoumbos. Nevertheless the police came to Marshack's house to investigate the complaint.
14 (SBL NB 0015, PA files 000037).

15 118. From August 2007 through January 2008 Marshack filed complaints against Marshack's
16 neighbors regarding the ongoing harassment, in spite of the stipulated anti harassment
17 agreement. Marshack Discovery #300-500, Marshack, VPD #003- 006 Clausen discovery,
18 #1001 Clausen discovery, #999.

19 119. During February 2008 Brian Carlson, Vancouver Director of Public Works, disparaged
20 Marshack in an email to SBI President Toni Montgomery, suggesting that he would only pay
21 a dollar for her Property. Carlson was invited to participate in a SBL meeting regarding
22 Marshack's current lawsuit against the defendants, and he replied that he would attend after
23 stopping off to buy Marshack's house for a dollar. Marshack -emails #002141
24

25 120. On March 5, 2008 Morris planted about a dozen spite trees to obscure Marshack's view of

1 the river. Marshack-PA Files #000476-575.

2 121. On April 12 through 19, 2008 the VPD investigated the complaint filed by SBL residents
3 Merrilee Amy and Bob Byrd. Julianne Leas also complained. VPD investigated and
4 recommended to the City Attorney that Marshack be arrested for trespass on the easement and
5 violation of the Court order. Included with this police report was a copy of the Court order
6 upholding Marshack's easement rights. Marshack VPD EPR #00209.

7
8 122. On April 14, 2008 an e-mail string between East Commander Dave King and SBL
9 President Toni Montgomery confirmed that the VPD would arrest Marshack if she used the
10 easement to the west of its illegal fence. King mentioned that he had conferred with City
11 Attorney Ted Gathe on this matter. Montgomery stated that she had been conferring with
12 Asst. City Attorney Brent Boger regarding grounds to arrest Marshack. Marshack emails
13 003196 and 002412-241.

14 123. On June 16, 2008 Mooney physically assaulted Marshack and attempted to seize her
15 camera. The VPD investigated but again did nothing. Marshack, Box 1238, VPDEPR #0215-
16 221, Marshack- PA Files 000605- Marshack-PA Files, 000605-000610 .

17 124. On July 3, 2008 Morris, Mooney, Kellogg and Leas were found in Contempt of Court for all
18 of the harassment since the stipulated anti-harassment agreement. Morris was also found
19 guilty of assault. All were fined and orders imposed to pay some Marshack attorney fees. See
20 Superior Court file #04-2-04611-8. P.L.F, 04-2-04611-8, #310.

21
22 125. In July 2008, in spite of Marshack's attorney Lorenz' public records requests, the City
23 routinely continued to refuse to comply. Lorenz appealed to Judge Nichols to get the records.
24 P.L.F 04-2-04611-8.

25 126. Between August and September 2008 the court signed the final order regarding the

1 neighbor's contempt. P.L.F, 04-2-04611-8, #310.

2 127. On September 16, 2008 Marshack attorney Lorenz wrote a letter to East Precinct

3 Commander Rick Smith advising him of the Contempt finding and again of Marshack's
4 easement rights. He asked that the VPD stop taking sides and start protecting Marshack.

5 Marshack- VPD, 0004- 000243, 00244-00257 Marshack- VPD EPR #00245

6 128. On February 2009 Richard Landis made sure that Marshack neighbor Scott Campbell was
7 informed of the status of the City's dealings with Marshack. Landis sent Campbell copies of

8 e-mails where Landis had complained about Marshack to BNSF. Landis sent e-mails to

9 BNSF asking for its assistance in protecting Campbell from Marshack's use of the old road.

10 Citizen Advocate-Additional Docs 000127 Citizen Advocate 00128-9 Citizen Advocate

11 00141-146 Citizen Advocate 00146.

12 129. During the summer of 2009 Scott Campbell met again with City Officials Ted Gathe, John

13 Mannix, Tim Leavitt and Thayer Rorabaugh to discuss a strategy for coping with the public

14 right of way through Campbell's property and the private train crossing at 144th, both of

15 which were used by Marshack. In his notes Campbell records asking for help in vacating the

16 old road to end Marshack's capacity to use it, since the evidence establishes that the road was

17 not previously vacated. See Campbell Legal file acquired by attorney Lance Brooks. (See

18 Campbell Bates 435-437, 478-499 for Campbell's discussions with City Attorney Ted Gathe,

19 City Engineer John Mannix, City Transportation Director Thayer Rorabaugh, Mayor Tim

20 Leavitt). See Campbell Bates 450-466 for the City's discussion that though there are no

21 historic documents showing the road was ever vacated, they have determined that it was the

22 County's "wish" to do so and therefore it was done.

23 130. An August 6, 2009 e-mail from City employee Thayer Rorabaugh to Scott Campbell offered
24
25

1 to vacate the old road that runs through Campbell's property. However, this e-mail also
2 reflected concern because from Rorabaugh's discussions with City Attorney Ted Gathe, he
3 feared that such action might further provoke Marshack, who had already instigated litigation
4 against the City. See Campbell legal file at Campbell Bates 478.

5
6 131. In October 2009 Campbell's notes established that he met with City official John Mannix
7 and learned about the plans for the right of way through his property. Campbell's notes state
8 "... call Richard Landis." See Campbell legal file at Campbell Bates 483.

9
10 132. On February 22, 2010 Campbell spoke with Mayor Leavitt and the Chair of the Quiet Zone
11 committee, Roger Parsons. Parsons suggested revocation of Marshack's home occupation
12 permit as a way of securing the Quiet Zone. See Campbell legal file at Campbell Bates 480.

13
14 133. On February 24, 2010 Campbell made notes to himself of his conversation with neighbor
15 Julianne Leas regarding Marshack's activities. They discussed her home occupation permit,
16 those who reside at Marshack's home and the Morris' videos. Julianne reported that the
17 videos were not admissible in Court since the Judge found that they violated the HIPAA laws.
(See Campbell legal file at Campbell Bates 500-501).

18
19 134. There are a number of documents in the Campbell file dated February 2010 which pertain to
20 the construction of the new Campbell residence and its sale to David and Martha Lindsay.
21 Campbell violated wetlands laws during construction. He was notified that he had illegally
22 built within the wetlands' buffer. In the sale documents Campbell stated that he could not
23 guarantee that there was not a public right of way across the property. See Campbell legal file
24 at Campbell Bates 508-606 and 001-205, and 729-789.

25
135. On March 11, 2010 Roger Parsons, Chair of the Quiet Zone committee, sent an e-mail to
City officials and neighbors expressing dismay that the FRA denied the Quiet Zone permit.

1 He asked the City to revoke Marshack's home occupation permit so the project could move
2 forward. In one letter, Asst. City Attorney Brent Boger threatened to bring suit against the
3 FRA for denying the permit. (This e-mail and letters from Brent Boger to the FRA are
4 located in the Campbell Bates 210-219, 220-22. See also Parson's email 225-234).
5
6 136. July 10, 2010 Ted Gathe sent to Scott Campbell a file containing documents from the
7 neighborhood property lawsuits. Even though Campbell was not a party to the litigation,
8 determinations regarding the old road made in those procedure had the potential to
9 substantially impact the use and value of his property. See Campbell Bates 437-448.
10
11 137. Among the Campbell documents is a July 16, 2010 letter from Asst. City Attorney Brent
12 Boger, which concluded that the old road through the Campbell's property was private, since
13 the City could not find documents to prove it was vacated. See Campbell Bates 449-477.
14
15 138. On July 17, 2010 neighbor Bob Byrd (SBL Quiet Zone Chair) sent documents to Scott
16 Campbell regarding Marshack's Court orders and Brent Boger's determination on the old
17 road. See Campbell Legal file acquired by attorney Lance Brooks at Campbell Bates 449-
18 477.
19
20 139. In March 2011 depositions were conducted for the Marshack v. Lindsay lawsuit regarding
21 Marshack's right to use the old road. The Lindsay's have blocked the road by tearing up the
22 asphalt, drilling a \$7000 water well in the middle of the road, and constructing a \$300,000
23 two bay garage addition to their five car garage. They have also installed a fence and steel
24 wall across the road. These additions not only completely barricade the road, but they are
25 illegally built in a federally protected wetland. Yet the City of Vancouver authorized permits
for this construction against Marshack's rights. The Lindsay's testified that Asst. City
Attorney Brent Boger assisted them with their case.

1 140. On April 12, 2011 the FRA finally granted the Quiet Zone permit to the City, but required
2 that it bear the cost to upgrade the private crossing at 144th, which provides access to
3 Marshack's property, with federally approved train crossing safety equipment. The FRA
4 reasoned that the road is under the jurisdiction of the City and therefore it is the City's
5 responsibility to pay the expenses of safety and road upgrades and maintenance. See FRA
6 letter at www.regulations.gov. The document number is FRA-2010-0170.
7

8 CLAIMS

9 A. DEFAMATION

- 10 1. The Defendant City broadcast written and oral unprivileged false statements about
11 Marshack that caused her damage in an amount to be proven at trial.

12 B. SLANDER OF TITLE

- 13 2. The City's intentional and malicious interference with and refusal to recognize the
14 validity of the terms of Marshack's easement constitutes slander of title, and interfered
15 with her ability to market and sell her property, all to her damage as may be shown at the
16 time of trial. Moreover the Property is currently unmarketable while it is unclear whether
17 the road is legally public or private.

18 C. INVASION OF PRIVACY

- 19 3. Through its actions, the City invaded Marshack's privacy regarding issues that would be
20 highly offensive to a reasonable person, and are not of legitimate concern to the public,
21 causing her damage in an amount to be determined at trial.

22 D. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

- 23 4. The City, through its extreme and outrageous conduct, negligently inflicted emotional
24 distress on Marshack, causing severe emotional distress. Marshack developed physical
25

1 symptoms evidencing and resulting from the emotional distress. Marshack was damaged
2 in an amount to be proven at trial.

3 E. INTENTIONAL OR RECKLESS INFLECTION OF EMOTIONAL DISTRESS

4 5. The City, through its extreme and outrageous conduct, intentionally or recklessly inflicted
5 emotional distress on Marshack, causing severe emotional distress. Marshack was
6 damaged in an amount to be proven at trial.

7 F. 28 U.S.C. 1983 CIVIL RIGHTS CLAIM

8 9. The City's conduct, through its police officers, code enforcement officers and prosecutor,
10 was under color of state law in violation of Marshack's rights. As a result of the City's
11 conduct, Marshack was damaged in an amount to be proven at trial.

12 WHEREFORE, Kathy J. Marshack prays for relief as follows:

- 13 1. Judgment in favor of Kathy J. Marshack and against the City of Vancouver in an
14 amount to be established at the time of trial.
- 15 2. An award of attorney's fees and statutory damages to Kathy J. Marshack as allowed
16 by any statute or the common law.
- 17 3. The right to amend to add additional causes of action.
- 18 4. Further relief as is just and equitable in the premises.

19 DATED this ___ of _____, 2011

20 DANIEL LORENZ

21 _____
22 Daniel Lorenz, WSB 14668
23 Attorney for Plaintiff