

**TOWNSHIP OF TULPEHOCKEN,
BERKS COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2015-3

**AN ORDINANCE OF THE TOWNSHIP OF TULPEHOCKEN, BERKS
COUNTY, PENNSYLVANIA, VACATING PORTIONS OF THE RIGHT-
OF-WAY OF APPLE STREET**

WHEREAS, pursuant to Section 2304 of the Second Class Township Code, 53 Pa. C.S. §67304, a Board of Supervisors, by Ordinance, may vacate any road which is located wholly or partially within the Township; and

WHEREAS, a Board of Supervisors is authorized by Section 2311 of the Second Class Township Code, 53 Pa.C.S. §67311, to vacate any road, wholly or partially, by agreement with the affected property owner without appointment of viewers; and

WHEREAS, an agreement vacating a portion or entirety of a road by agreement of the property owners shall set forth the facts regarding the vacation accompanied by a map or draft of the area agreed to be vacated which shall be recorded in the Office of the Recorder of Deeds; and

WHEREAS, the Board of Supervisors of Tulpehocken Township desires to vacate portions of the right-of-way of Apple Street; and

WHEREAS, the only properties affected by the proposed right-of-way vacation are 8 E Tanner Street, Tulpehocken Township, Property ID Number 86430906489069, owned by Walter M. Martin, and 47 B Apple Street, Tulpehocken Township, Property ID Number 86430907573877, owned by Kevin S. Brown and Carla Ann Brown (the "Affected Property Owners"); and

WHEREAS, the Affected Property Owners, Walter M. Martin and Kevin S. Brown and Carla Ann Brown, concur with the vacation of portions of the right-of-way of Apple Street by

the Township and have entered into an agreement for the vacation of portions of the right-of-way of Apple Street ("Agreement"), a copy of which is attached hereto as Exhibit "1", incorporated herein and made a part hereof; and

WHEREAS, the portions of the right-of-way of Apple Street the Board of Supervisors of Tulpehocken Township desires to vacate are depicted as Area "A" and Area "B" on a Plan prepared by DeVon R. Henne, PLS attached to the Agreement as Exhibit "A", and more fully described on the legal descriptions attached to the Agreement as Exhibit "B"; and

WHEREAS, the Board of Supervisors of Tulpehocken Township believe that the vacation of portions of the right-of-way of Apple Street as exhibited on Exhibit "A" and described on Exhibit "B" of the Agreement is in the best interest of the residents of Tulpehocken Township; and

WHEREAS, the Board of Supervisors of Tulpehocken Township desires to adopt a duly advertised Ordinance approving the Agreement with the Affected Property Owners vacating portions of the right-of-way of Apple Street.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of Tulpehocken Township, Berks County, Pennsylvania, and it is hereby enacted and ordained by authority of the same:

Section 1. Walter M. Martin and Kevin S. Brown and Carla Ann Brown, have entered into an Agreement with the Township of Tulpehocken in accordance with Section 2311 of the Second Class Township Code, 53 Pa.C.S. §67311, for vacation of portions of the right-of-way of Apple Street which shall be recorded with the Berks County Recorder of Deeds. A true and correct copy of the Agreement between Walter M. Martin and Kevin S. Brown and Carla

Ann Brown, the Affected Property Owners, and Tulpehocken Township attaching as Exhibit "A" the plan exhibiting and as Exhibit "B" the legal description of the portions of the right-of-way of Apple Street to be vacated is attached hereto, made a part hereof and marked as Exhibit "1."

Section 2. The Board of Supervisors of Tulpehocken Township by Agreement with Walter M. Martin and Kevin S. Brown and Carla Ann Brown, hereby vacates portions of the right-of-way of a public street known as Apple Street in Tulpehocken Township, Berks County, Pennsylvania as exhibited and described on the Plan and Legal Descriptions attached respectively as Exhibits "A" and "B" of the Agreement..

Section 3. SEVERABILITY. If any sentence, clause, section or part of this Ordinance is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the Ordinance. It is hereby declared to be the legislative intent of the Board of Supervisors that this Ordinance would have been adopted had such provisions not been included herein.

Section 4. REPEALER. All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance.

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Section 5. EFFECTIVE DATE. This Ordinance shall become effective five (5) days after enactment.

ENACTED AND ORDAINED this 12th day of August, 2015.

BOARD OF SUPERVISORS OF
TULPEHOCKEN TOWNSHIP,
BERKS COUNTY, PENNSYLVANIA

By:

Gay A. Deek
Chairman

Richard A. Kramer
Member

Peter A. Flick
Member

ATTEST:

Christy Flaherty
Secretary

CERTIFICATE OF ENACTMENT

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2015-3 of Tulpehocken Township, Berks County, Pennsylvania, which was adopted by the Board of Supervisors of said Township at a regular meeting held pursuant to notice as required by law on August 12, 2015.

WITNESS my hand and seal this 12th day of August, 2015.

Christy Flaherty
Secretary, Tulpehocken Township

Prepared by: Christopher J. Hartman, Esq.
Hartman Valeriano Magovern & Lutz
1100 Berkshire Boulevard, Suite 301
P.O. Box 5828
Wyomissing, PA 19610

Return to: Christopher J. Hartman, Esq.
Hartman Valeriano Magovern & Lutz
1100 Berkshire Boulevard, Suite 301
P.O. Box 5828
Wyomissing, PA 19610
(610) 779-0772

Premises: Portions of Right-of-Way of Apple Street
Adjacent to 8 E Tanner Street
and 47 B Apple Street
Tulpehocken Township
Berks County, Pennsylvania

Adjacent to Property ID 86430906489069 and Property ID 86430907573877

AGREEMENT FOR VACATION OF PORTIONS OF THE RIGHT-OF-WAY OF APPLE STREET

THIS AGREEMENT ("Agreement"), made this ____ day of _____, 20__, by and between WALTER M. MARTIN, an individual, with a mailing address of 8 E Tanner Street, Myerstown, Pennsylvania 17607, and KEVIN S. BROWN and CARLA ANN BROWN, individuals, with a mailing address of PO Box 121 Mount Aetna, Pennsylvania 19544, and the TOWNSHIP OF TULPEHOCKEN, a Township of the Second Class, with an address of 22 Rehrersburg Road, Rehrersburg, Pennsylvania 19550-0272 (hereinafter referred to as the "Township").

BACKGROUND

WHEREAS, pursuant to Section 2304 of the Second Class Township Code, 53 Pa. C.S. §67304, the Board of Supervisors of a Second Class Township may, by Ordinance, vacate any road which is located wholly or partially within the Township; and

WHEREAS, a Board of Supervisors is authorized by Section 2311 of the Second Class Township Code, 53 Pa.C.S. §67311, to vacate any road, wholly or partially, by agreement with the affected property owner without appointment of viewers; and

WHEREAS, an agreement vacating a portion or entirety of a road by agreement of the property owners shall set forth the facts regarding the vacation accompanied by a map or draft of the area agreed to be vacated which shall be recorded in the Office of the Recorder of Deeds; and

WHEREAS, the Board of Supervisors of Tulpehocken Township desires to vacate portions of the right-of-way of Apple Street as depicted as Area "A" and Area "B" on a Plan prepared by DeVon R. Henne, PLS attached hereto as Exhibit "A", incorporated herein and

made a part hereof and more fully described on the legal descriptions attached hereto as Exhibit "B", incorporated herein and made a part hereof; and

WHEREAS, the Board of Supervisors of Tulpehocken Township believe that the vacation of portions of the right-of-way of Apple Street as exhibited on Exhibit "A" and described on Exhibit "B" is in the best interest of the residents of Tulpehocken Township; and

WHEREAS, the only properties affected by the proposed road vacation are 8 E Tanner Street, Tulpehocken Township, Property ID Number 86430906489069, owned by Walter M. Martin, and 47 B Apple Street, Tulpehocken Township, Property ID Number 86430907573877, owned by Kevin S. Brown and Carla Ann Brown (the "Affected Property Owners"); and

WHEREAS, the Affected Property Owners concur with the vacation of the designated portions of the right-of-way of Apple Street by the Township and have entered into this Agreement for the vacation of the designated portions of the right-of-way of Apple Street; and

WHEREAS, the Board of Supervisors of Tulpehocken Township desires to adopt a duly advertised Ordinance approving the Agreement with the Affected Property Owners vacating the designated portions of the right-of-way of Apple Street in Tulpehocken Township.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND, and in consideration of One Dollar (\$1.00) and the promises contained herein, the parties agree as follows:

1. The above section captioned "Background" is incorporated herein by reference as though set forth in full.
2. The Affected Property Owners agree to the enactment of an ordinance by the Board of Supervisors of Tulpehocken Township in accord with Section 2311 of the Second Class Township Code, 53 Pa.C.S. §67311, to vacate portions of the existing public right-of-way of Apple Street as exhibited on the Plan attached hereto as Exhibit "A" and more fully described in Exhibit "B."
3. Upon execution of this Agreement, the Township shall be relinquished from any and all responsibility with regard to the vacated portion of the right-of-way of Apple Street which ownership thereafter shall vest with the Affected Property Owners, and the Affected Property Owners hereby accept responsibility for the vacated portion of the right-of-way of Apple Street.
4. The parties agree that the vacation of portions of said right-of-way is in the best interest of the public and residents of Tulpehocken Township.
5. This Agreement is made pursuant to, and shall be construed, interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to otherwise applicable principles of conflicts of law.

6. This Agreement shall be recorded at the Office of the Recorder of Deeds of Berks County, Pennsylvania, and shall constitute a covenant running with the properties and/or equitable servitude, and shall be binding on the Affected Property Owners, their executors, heirs, assigns, and any other successors in interest, in perpetuity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

(SEAL)

AFFECTED PROPERTY OWNERS

Walter M. Martin

Kevin S. Brown

Carla Ann Brown

BOARD OF SUPERVISORS THE
TOWNSHIP OF TULPEHOCKEN
Berks County, Pennsylvania

By: _____
Gary A. Deck, Chairman

(SEAL)

Attest: _____
Christy Flaherty, Secretary

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this, the _____ day of _____, 2015, before me, the undersigned officer, a notary public in and for said county and state, personally appeared WALTER M. MARTIN, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Agreement and acknowledged that he executed the same for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this, the _____ day of _____, 2015, before me, the undersigned officer, a notary public in and for said county and state, personally appeared KEVIN S. BROWN and CARLA ANN BROWN, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing Agreement and acknowledged that they executed the same for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

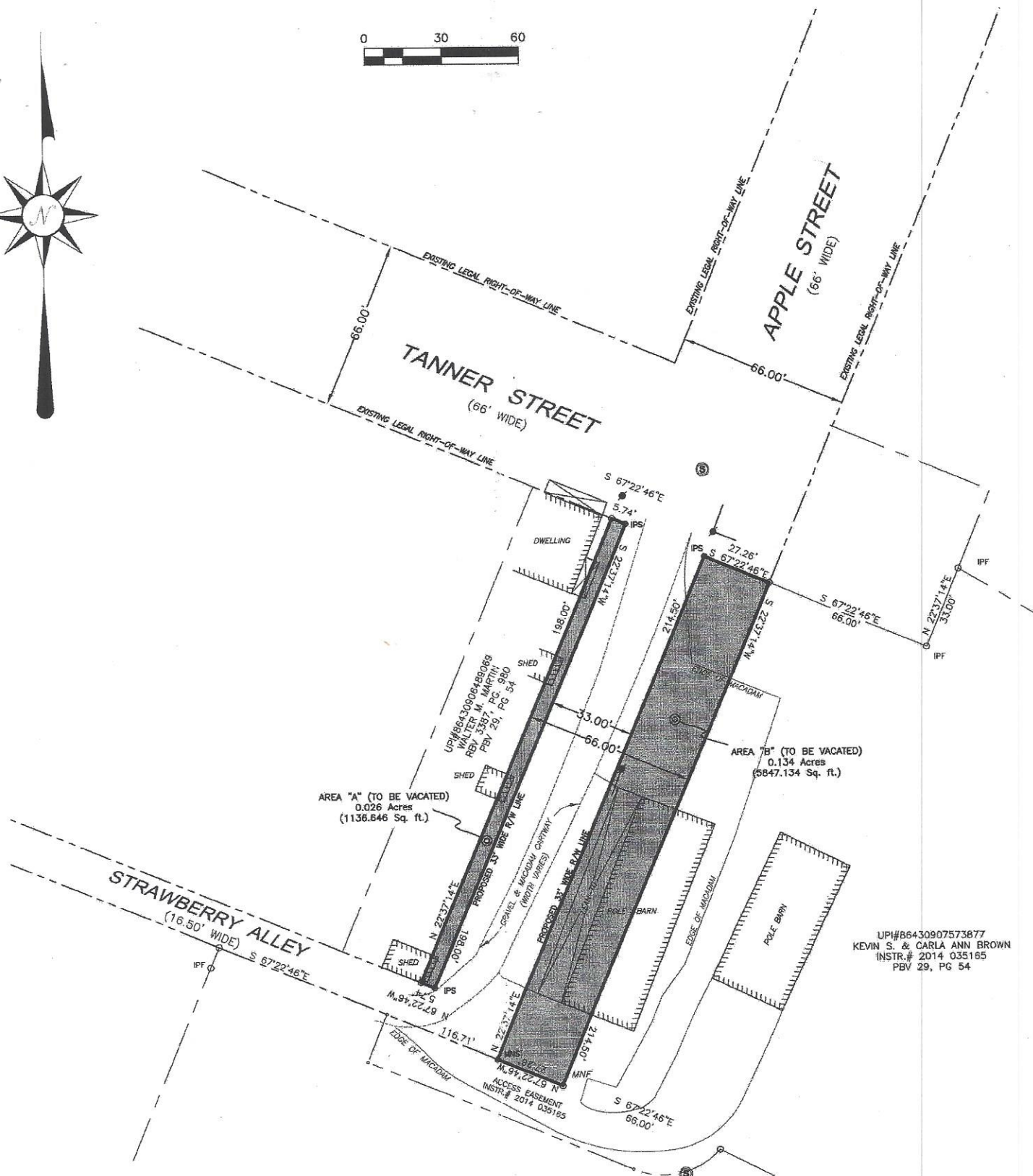
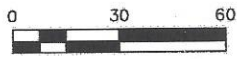
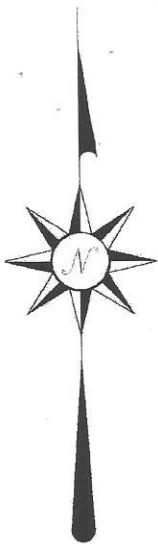
COMMONWEALTH OF PENNSYLVANIA :
 :
COUNTY OF BERKS : SS.
 :

On this, the _____ day of _____, 2015, before me, the undersigned officer, personally appeared GARY A. DECK, who acknowledged himself to be the CHAIRMAN of the Township of Tulpehocken Board of Supervisors, a municipal corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Township by himself as such officer.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

Notary Public

My Commission Expires:



AREA "A" (TO BE VACATED)
0.026 Acres
(1136.646 Sq. ft.)

AREA "B" (TO BE VACATED)
0.134 Acres
(5847.134 Sq. ft.)

UPI#B6430907573877
KEVIN S. & CARLA ANN BROWN
INSTR.# 2014 035165
PBV 29, PG 54



DeVon R. Henne, PLS

PROFESSIONAL LAND SURVEYOR

133 Lakeview Road
Bernville, Pa 19506
Ph. 610-488-9585 Fax 610-488-1067

UPI#B6430906479835
KEVIN S. & CARLA ANN BROWN
INSTR.# 2014 035164
PBV 211, PG 50 LOT 2

EXHIBIT "A"

VACATION OF PORTION OF APPLE STREET
VILLAGE OF MT. AETNA
TULPEHOCKEN TOWNSHIP, BERKS COUNTY, PA
AREA "A"

ALL THAT CERTAIN strip of land situate along the west side of Apple Street between Tanner Street and Strawberry Alley in the Village of Mount Aetna, in Tulpehocken Township, Berks County, Pennsylvania, being Area "A" of a Right of Way Survey prepared July 3, 2015, by DeVon R. Henne, P.L.S. (Plan # 10630-A) an excerpt of which is attached hereto and made a part hereof, and being more fully bounded and described as follows:

BEGINNING at the northwest corner thereof, a point at the intersection of the southern Existing Legal Right of Way line of Tanner Street (66 feet wide) with the western Existing Legal Right of Way Line of Apple Street (66 feet wide);

THENCE along Tanner Street, South 67 Degrees 22 Minutes 46 Seconds East a distance of 5.74 feet to an iron pin (set) at the proposed southwest corner of said Tanner Street and Apple Street (33 feet wide proposed) ;

THENCE along the proposed western right of way line of Apple Street (33 feet wide) South 22 Degrees 37 Minutes 14 Seconds West a distance of 198.00 feet to an iron pin set at the proposed northwest corner of Apple Street (33 feet wide) and Strawberry Alley (16.5 feet wide);

THENCE along the extension of the northern existing right of way line of Strawberry Alley (16.5 feet wide) North 67 Degrees 22 Minutes 46 Seconds West a distance of 5.74 feet to the point of intersection of the northern Existing Legal Right of Way line of Strawberry Alley (16.5 feet wide) with the

EXHIBIT "B"

THENCE along the southern Existing Legal Right of Way Line of Tanner Street (66 feet wide) South 67 Degrees 22 Minutes 46 Seconds East a distance of 27.26 feet to the point of BEGINNING.

CONTAINING an area of 0.134 acres (5,847.134 square feet).