Supreme Court Case No. 89533-3

Court of Appeals, Division I, Case No. 68618-6-I

SUPREME COURT OF THE STATE OF WASHINGTON

CRYSTAL RIDGE HOMEOWNERS ASSOCIATION, a Washington nonprofit corporation, et al.,

Respondents,

v.

CITY OF BOTHELL, a Washington municipal corporation,

Petitioner.

AMICUS CURIAE BRIEF OF WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS IN SUPPORT OF CITY OF BOTHELL'S PETITION FOR REVIEW

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I. IDENTITY OF AMICUS CURIAE

Amicus is the Washington State Association of Municipal Attorneys, the organization of municipal attorneys representing the cities and towns across the State (hereinafter referred to as "WSAMA").

II STATEMENT OF THE CASE

WSAMA adopts the Introductory Statement and Statement of the Case submitted by the Petitioner, City of Bothell (hereinafter "Bothell").

III. ARGUMENT

This case involves a variety of important issues, issues of first impression that affect every city and county in the state. This case also presents issues of substantial public interest that should be decided by the Supreme Court pursuant to RAP 13.4(b).

A. The Court of Appeals decision is in error because it results in an unconstitutional gift of public funds.

First of all, it should be noted that the unconstitutional gift of public funds argument was raised below. This is contrary to Respondents' statement on page 1 of their Response, in which they claim Bothell raised the "unconstitutional gifting of public funds issue" for the first time in its Petition for Review. WSAMA has carefully reviewed the record, and from its reading, respectfully asserts that this representation is not correct. Bothell raised and argued unlawful gifting of public funds with the trial

court,[1] then again with Division One,[2] and now before this Court. In so far as this Court may be less inclined to grant review based on arguments raised for the first time on appeal, this is not the case with regard to Bothell's gifting of public funds argument.[3] But more to the point, WSAMA believes the Court of Appeals decision is in error because it *will* result in an unconstitutional gift of public funds in violation of Art. 8, Sec. 7 of Washington's Constitution. WSAMA asks this Court to review the actual record in this case carefully and not to rely upon the representations made in Respondent's briefing. Based upon a review of the record, it is clear that the interceptor pipe is a private facility that benefits private property. Thus, Division One's decision that the City has a duty to maintain this pipe is in error, as it violates the constitutional prohibition against using public funds for a private purpose.

B. The interceptor pipe does not provide a public benefit. It merely mitigates the environmental harm caused by the development of the private plat of Crystal Ridge itself.

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[1] For example, Bothell's Utility Manager testified that public stormwater systems "cannot be constructed, operated and/or maintained solely to protect private property. It is my understanding that this would be a *misappropriation and/or misuse of public funds*. . . . Furthermore, if . . . Bothell is responsible for maintenance of the interceptor trench in Crystal Ridge, then this would mean that *Bothell [would be] spending time, money, and manpower to solely benefit private parties*, the homeowners in Crystal Ridge. *This would not be an appropriate use of public funds and resources*." CP 343-344 (emphasis added). *See, e.g.,* CP 317; 320 (Bothell indicates that it could not spend public funds and/or resources to maintain drainage facilities that solely benefit private parties).

[2] *See, Brief of Appellant, p. 27 (emphasis added):* "[L]ocal governments do not maintain drainage facilities that solely benefit private property, as this would be a *gift of public funds to a private party in violation of the Washington State Const., art. 8, sec. 7.*"

[3] Because Bothell raised the unconstitutional gifting argument below, WSAMA need not address Respondents' "manifest error" argument under RAP 2.5(a)(3).

The main issue in this matter, which Respondents try to mask, is that the interceptor pipe benefits only the private residential development of Crystal Ridge. There is no public benefit beyond the plat itself, other than a small, purely incidental benefit that is required, by law, as a condition of every development in this state.[4] For instance, Respondents agree that the interceptor pipe was designed, built and installed solely to allow for development of a *private* residential neighborhood. CP 697. It is true that after development was complete, the streets were dedicated to Snohomish County. It is undeniable, however, that but-for the development itself, *there would be no streets in Crystal Ridge.* Respondents argue that because the interceptor pipe helps keep the streets within the subdivision from flooding, it is – *ipso facto* – a "public" facility that should be maintained at public expense. They cite no legal authority for this proposition. Interestingly, they cite only to bare assertions by their own witnesses to the effect that this is how development should work, as if developers and private property owners should not be responsible their own facilities.[5] Not surprisingly, the record proves that Bothell's

[4] RCW 58.17.110(2). *See*, CP 724, Finding No. 26 of the Hearing Examiner.

[5] The only "witnesses" who even attempted to testify to a public benefit were the Respondents' experts. One witness for the Respondents testified that the interceptor pipe protected the public roads and public facilities *in the plat,* and the other testified that it protected the lands in and *below the plat. Response, p. 4.* But the lands inside the plat were already wet, and there is no evidence in the record to suggest that this land could not contain its own water in its pre-developed stage. Furthermore, there is no evidence to support a finding that the land *below the plat* was wet. Instead, this land would only

engineers disagree with this proposition. CP 244-252; 255-256; 343-346.

The main problem with Division One's decision is that the Court of Appeals did not understand, or take into account, the fact that the interceptor pipe was intended solely to mitigate the adverse environmental effects of the private development of Crystal Ridge, as required by RCW 58.17.110[6] and the State Environmental Policy Act (SEPA) RCW Ch. 43.21C.[7] The fact that the interceptor pipe mitigated adverse effects caused by Crystal Ridge, so as to protect "the public health, safety and general welfare" per RCW 58.17.110(2) from the development itself, does not turn the pipe into a public benefit – in other words, a requirement not to cause public harm is not automatically a public benefit. There is no evidence in the record to support a finding that the subject property caused flooding to <u>other</u> properties <u>before</u> the plat was developed; instead, the interceptor pipe was intended solely to mitigate the effects of the development itself. Under Respondents' theory, every single private development has a public benefit simply because the developer must mitigate the environmental harm of its own development so as to protect

become wet if development were allowed. CP 725, Examiner's Concl. No. 6 (Examiner notes that "downslope discharge" of drainage waters will be a "challenge." Applicant is required to develop a drainage plan "to find a legal and acceptable fashion for disposing of drainage waters which are intercepted and/or generated *by the development*" so as not to adversely affect the properties "*downslope of the existing property.*")

[6] CP 724, Hearing Examiner's Finding No. 26.

[7] CP 724, Hearing Examiner's Conclusion No. 1.

"the public health, safety and general welfare."

If that were the case, the result would be to foist upon local government and the taxpayers the responsibility for private development. Ultimately, the result would be to rip away from developers the incentive to develop private residential property in a reasonable manner since, after all, the responsibility for environmental impacts of the development would eventually fall upon the local government (and its taxpayers); regardless of the fact that the development's impacts only affect the residents of the developer's particular development. This is contrary to the intention of SEPA and the development statute, RCW Ch. 58.17. If the state of Washington is going to shift the consequences of private development from the private sector to the general public, then this is a change that the state legislature should make, not the courts. "The legislature may change the common law. However, it is not the prerogative of the courts to amend the acts of the legislature." *Spokane Methodist Homes, Inc. v. Dep't of Labor & Indus.*, 81 Wn. 2d 283, 288, 501 P.2d 589, 592 (1972); *Anderson v. City of Seattle*, 78 Wn. 2d 201, 471 P.2d 87 (1970).

C. The Hearing Examiner intended the drainage disclosure to apply to all property in the plat, not just individual residential lots.

The Court of Appeals committed error by completely ignoring the Drainage Disclosure in this case, which is a recorded document affecting

the entire plat of Crystal Ridge, Div. II, *including that portion of the property where the interceptor pipe is buried.* Respondents make representations about the recorded Drainage Disclosure that do not appear consistent with the record. Once again, WSAMA asks the Supreme Court not to rely on those representations, but instead to look at the actual Drainage Disclosure, which is attached as App. C to Bothell's Petition.[8] The Disclosure is a 4-page document (all 4 pages stamped no. "8711090361") which includes a legal description of the plat.

Respondents argue, and both the trial court and Division One improperly found, that the recorded Disclosure applies only to *individual residential lots*, and not to all property within the plat. This limitation is contrary to and refuted by both the Examiner's own words *and* the property description filed with the Disclosure. *See* the Hearing Examiner's 1984 Decision, Condition J(iv):

> Prior to recording of the *final plat* the applicant shall have filed and recorded with the county Auditor a document, . . . which discloses the fact that substantial surface and subsurface drainage controls have been necessary in the development of the subject property and that special and/or extraordinary drainage controls may be necessary on individual lots. *Said document shall be recorded in such a fashion as to be included in any title search conducted regarding any portion of the subject property.*

[8] WSAMA reviewed the record and the full Drainage Disclosure was submitted to the Court of Appeals. A copy of the relevant pages of the Petitioner's Court of Appeals' brief, and the four pages of the Drainage Disclosure submitted therewith, are attached to this brief as Appendix No. 1.

CP 727 (emphasis added).[9] The Examiner required the Disclosure to be filed with regard to "any portion of the subject property"; and the property description included with the Disclosure identifies the entire plat of division II of Crystal Ridge – including Tract 999, where the interceptor pipe is located – not just "individual residential lots." *Petition*, App. C.[10] The Court of Appeals holding that this recorded document applies only to "individual lots" in Crystal Ridge, instead of the entire plat, constitutes an error of law that WSAMA respectfully asks this Court to review.

D. Division One erred by ignoring Bothell's argument regarding common law dedication of a drainage easement to the public.

This argument was raised below. In their reply, Respondents make another inaccurate assertion by claiming that Bothell raised the issue of a common law dedication "for the first time" with the Court of Appeals. (*Response*, p. 1.) Once more, upon careful review, WSAMA respectfully submits that this assertion is incorrect. Bothell raised and argued common

[9] Respondents have repeatedly misled the lower courts (and this Court) by deleting the underlined portion of the Examiner's Decision quoted above. *See, e.g., Petitioner's Response to Bothell's Petition for Review, p. 6;* and CP 275; 297. This is why Amicus asks the Court to closely review the actual record and not rely upon Respondents' representations thereof.

[10] As noted, Respondents make several representations with regard to this issue that appear inconsistent with the record. First, they state that the Examiner required the Disclosure be "filed on 'individual lots.'" *Response, p. 5.* This is not correct. The Examiner clearly required that the Disclosure be filed on the "final plat." CP 727. Second, they curiously claim the Disclosure attached as App. C to Bothell's Petition is only a two-page document with no legal description. *Response, p. 6.* Yet, App. C is in fact, as the Court can see, a four-page document that includes a legal description.

law dedication at the trial court level.[11] It was one of Bothell's primary arguments in support of its summary judgment motion. In fact, the trial judge himself even articulated that this was Bothell's main defense when rendering his oral decision.[12] In so far as this Court may be less inclined to grant review of arguments raised for the first time on appeal, this is not the case with regard to the issue of a common law dedication.

E. The scope of a drainage easement dedicated on the face of a plat is an issue of first impression and presents a question of substantial public importance.

This is an issue of first impression. WSAMA has made a careful review of Washington law and could not find a single case addressing the scope of a public drainage easement dedicated on the face of a plat. In fact, WSAMA could not find a case addressing the *scope* of a public drainage easement at all.[13] Contrary to arguments raised by Respondents, this Court should not be distracted from the real issue here. This is an issue of first impression that deserves this Court's attention. Here, the

[11] A common law dedication is based upon a showing that Bothell "accepted" the proposed dedication of the interceptor pipe, such as by maintaining the pipe. Bothell repeatedly presented undisputed testimony at the trial court level that this never occurred. CP 319-32; 325; 333; 338; 263; 344; 249 (neither the County nor Bothell intended to take over maintenance of the interceptor pipe; nor is there any evidence in the record to support a finding that either the County or Bothell ever maintained the pipe).

[12] The trial judge stated: "The City asserts that the county never took control of the system, never maintained it, and in fact required a disclosure statement to be put on the individual purchase that would indicate that the individuals are going to be responsible for the various drainage systems.") CP 77 (emphasis added).

[13] *See, e.g.,* cases cited in Bothell's Petition, footnotes 7 & 8, pp. 8-9, none of which address a public drainage easement dedicated on the face of a plat.

Court of Appeals decision regarding the scope of the easement is in error. After focusing on only 11 words out of the entire former Snohomish County Code, Ch. 25, Division One defined a "public" (versus "private") facility as every facility whose purpose is to protect "life or property from, any storm, waste, flood or surplus waters." Slip Op. at 4. But this definition literally applies to *every* storm drainage facility – whether public or private. It is nonsensical. This statutory interpretation is overly broad; ignores other provisions of the applicable code, rules and regulations; and constitutes an error of law. For instance, the Court of Appeals ignored the state statutes cited in former Snohomish County Code (SCC) Ch. 25, especially RCW 86.15.010(3) & (5), which plainly state that the terms "flood waters" and "storm waters" are intended to apply only to waters that endanger "public" property. *See Petition, pp. 16-17.* The Court of Appeals also ignored the fact that the County's stormwater codes, rules and regulations in effect at the time stated, for example, that: (i) the minimum size of a public storm pipe was 12" in diameter (with an 8" diameter allowed for certain designated pipes) (CP 396; 398); and (ii) the County could only take over maintenance of a private drainage facility after certain mandatory requirements were met as set forth in former SCC 24.28.040(3) (CP 687) and the 1979 Drainage Manual (CP 439). These provisions mandated that a drainage easement was only one of five

requirements necessary for the County to take over a developer's drainage facility. Regarding the provisions listed above, it is undisputed that: (i) the pipe was only 6" in diameter (CP 296), not 12" or 8"; and (ii) *none* of the remaining four requirements necessary to transfer responsibility for the interceptor pipe from Crystal Ridge to the County had ever been met (CP 249). Thus, Division One violated the long-held rule of statutory construction that requires courts to construe each part of a statue with every other part so as to produce a harmonious whole. *State v. Akin,* 77 Wn. App. 575, 580, 892 P.2d 774 (1995). The rules of construction further require that every word, clause and sentence of a statutory enactment must be given effect; "no part should be rendered inoperative." *Id.* Had Division One considered all of the code provisions listed above (which Bothell brought to the lower courts' attention), WSAMA contends that it would had to have found that the interceptor pipe did not, and does not, meet the definition of, or requirements for, a "public" drainage facility. WSAMA respectfully asks the Supreme Court to accept review and correct Division One's error of law in apparently misconstruing and misinterpreting the relevant statutes, codes, and regulations in this case.

IV. CONCLUSION

For all of these reasons, and those identified by Bothell, WSAMA respectfully requests that Bothell's Petition for Review be granted.

Respectfully submitted this 20 day of November, 2013.

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APPENDIX TO AMICUS CURIAE BRIEF OF WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS IN SUPPORT OF CITY OF BOTHELL'S PETITION FOR REVIEW

Appendix 1 – Copy of full 4-page **Drainage Disclosure** for the Plat of Crystal Ridge Division 2 (Snohomish County Recording No. 8711090361).
The Drainage Disclosure was attached as **Appendix D** to the *Reply Brief of Appellant City of Bothell*. The Drainage Disclosure is being submitted along with pp. 15-20 of Bothell's *Reply Brief*, which references the full 4-page **Drainage Disclosure/Appendix D**. *See*, footnote 11, page 17, the Court below took judicial notice of the full 4-page **Drainage Disclosure** at issue in this case.

Appendix 1

No. 68618-6-1

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

CRYSTAL RIDGE HOMEOWNERS ASSOCIATION, a Washington nonprofit corporation, etc., et al.

Plaintiffs/Respondents,

vs.

CITY OF BOTHELL, a municipal corporation,

Defendant/Appellant.

REPLY BRIEF OF APPELLANT CITY OF BOTHELL

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the County intended back in the 1980s is classic hearsay. Neither the trial court below, nor this Court, should consider hearsay testimony in a summary judgment motion pursuant to the Rules of Evidence and CR 56(e).[7] At a minimum, hearsay is insufficient to defeat the City's motion for summary judgment, which is based on actual evidence in the record.

Because neither the County nor the City has ever taken any action to accept the interceptor pipe it is clear that it does not have a common law duty to maintain that pipe at this time.[8]

D. The Drainage Disclosure Is Valid And Plaintiffs' Argument To The Contrary, Raised For The First Time On Appeal, Is Without Merit

The City has pointed out that the Drainage Disclosure supports two facts. First, that the County did not intend to take responsibility for any future drainage problems within the private residential development of Crystal Ridge after the plats were recorded. Second, that each Plaintiff in this lawsuit had notice of the potential for serious and substantial drainage

[7] *King County v. Housing Authority*, 123 Wn2d 819, 826, 872 P.2d 516 (1994). The trial court indicated it would not consider inadmissible testimony in this matter. But based upon a review of the trial court's oral ruling with regard to the City's evidentiary objections, the trial court did, in fact, consider some inadmissible evidence. CP 74-75. Trial judge indicates that he will not consider "conclusory legal summaries" or opinion testimony speculating as to "the intent of the county" contained in the Declarations of Mr. Trepanier. *But see*, CP 79-80, where the trial court does, in fact, consider opinion testimony from Mr. Trepanier. The City believes consideration of this evidence constitutes reversible error.

[8] Plaintiffs' contention that the City raised this defense for the first time on appeal is blatantly incorrect. *Pls' Response*, p. 2. This defense was the main argument raised by the City below. CP 320-321, 258, 260. The trial judge even articulated this as the City's defense when rendering his oral decision. CP 77.

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problems before they bought their properties, and further, had notice that addressing drainage and flooding problems on their individual lots would be their own responsibility – not the County's.[9]

In response, Plaintiffs argue, for the first time on appeal, that the Drainage Disclosure is not binding because it did not contain a legal description sufficient to satisfy the statute of frauds.[10] *Pls' Response*, p. 48. This argument has no merit. First, the record indicates that the properties are identified in the recorded Drainage Disclosure by tax parcel numbers. CP 472. Plaintiffs cite *to Martin v. Seigel*, 35 Wn. 2d at 229 (1949), for the proposition that "the statute of frauds requirement is not satisfied with descriptions containing only tax parcel numbers[.]" *Pls' Response*, p. 49 (emphasis added). In fact, the *Martin* case did not address tax parcel numbers as implied by Plaintiffs. Furthermore, the Washington Supreme Court has held that reference to a tax parcel number is indeed sufficient to satisfy the statute of frauds. *Bingham v. Sherfey*, 38 Wn.2d 886, 889, 234 P.2d 489 (1951) (holding reference to a tax parcel number adequate because a tax parcel number is statutorily required on the assessor' public record and "reference to this public record furnishes the

[9] Plaintiffs claim that the City did not "prove" this document actually appeared on Plaintiffs' Title Reports. *Pls' Response*, p. 12; 46. This is a red herring. The City does not have to prove this fact, which is only of relevance as between each Plaintiff and their title company, assuming they want to make a claim against their title company. All the City had to show, as it did, is that the disclosure was recorded with the assessor's office.
[10] Again, the Court generally does not consider arguments raised for the first time on appeal. *Doe*, 117 Wn.2d at 780.

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legal description of the real property involved with sufficient definiteness[.]"). Furthermore, had this argument been raised below, the City could have easily corrected the record by supplying the trial court with all four pages of the Drainage Disclosure, which includes the legal description of the affected properties. App. D.[11]

Plaintiffs' second argument, also raised for the first time on appeal, is that the Disclosure should be construed as nothing more than a "real covenant or equitable servitude."[12] *Pls' Response, p. 48.* Even if the Court were to consider this new argument, it is another red herring that misses the point. The main import of the Disclosure is to give notice to Plaintiffs that they will be responsible for addressing drainage and flooding problems on their own properties. The Drainage Disclosure is unambiguous. It conclusively demonstrates the County's "intent" not to assume responsibility for the "substantial drainage controls," including the

[11] The Court can take judicial notice of the entire recorded Drainage Disclosure pursuant to ER 201. *Gardner v. Am. Home Mort. Serv.*, 691 F. Supp. 2d 1192 (E.D. Cal. 2009) (Court will take judicial notice of publicly recorded documents related to foreclosure of plaintiff's property on motion to dismiss). The last two pages contain a legal description and a map attached as Schedule "A." Schedule "A" is also referenced on the first page of the Drainage Disclosure, which is in the record:

> I/We, the owner(s) of that certain property, situated in unincorporated Snohomish County, Washington, **being legally described as attached; *See* Schedule "A". And bearing Assessors Tax No(s): 414-00-010-010 and 4146-000-010-0104** have applied for and been granted PLAT APPROVAL for the Plat of CRYSTAL RIDGE Division 2 by Snohomish County Hearing Examiner[.]

CP 472; App. D.

[12] Again, the Court need not consider arguments raised for the first time on appeal. *Doe*, 117 Wn.2d at 780.

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interceptor pipe, that were installed in Crystal Ridge by the developer in an effort to make the site dry enough to be suitable for residential construction. When viewed in light of the other uncontested facts – such as the fact that the statutory requirements necessary to transfer maintenance responsibility to the County were not complied with (CP 249), and the fact that neither the County nor the City ever maintained this system – the Court can reach only one conclusion: that the Homeowner's Association has the duty and obligation to maintain its own interceptor pipe. Alternatively, as the Disclosure states, property owners can install specialized drainage features on their own lots to combat flooding caused by the alleged failure of the interceptor pipe. Either way, the County has made it clear that it will not be responsible for any flooding on residential property within Crystal Ridge, no matter what the cause of the flooding may be, including the alleged failure of the Plaintiffs' interceptor pipe.

Another circumstance supporting the City's position is the fact that the County required the developer to prepare a second drainage disclosure when it found that the first one was not explicit enough. The developer's first attempt at a disclosure document is included in the record at CP 469-470. But this initial document was never recorded, because the County required more. The County, in fact, wanted to make it clear that it was

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not assuming responsibility for the drainage problems onsite at Crystal Ridge; instead, such responsibility would lie with the property owner(s). The recorded document indicates that "substantial drainage controls" have been installed in the Plat, and "special and/or extraordinary drainage controls may be necessary on individual lots" in the future, and that **"compliance and/or knowledge are the obligation of the owner of the subject property."** CP 472 (emphasis added).

Finally, Plaintiffs continue to argue that the Drainage Disclosure simply does not apply to any drainage features on Tract 999, because this Tract is owned by the Homeowners Association, not by an "individual," and, according to Plaintiffs, the Disclosure only applies to lots owned by individuals. *Pls' Response*, p. 12. Plaintiffs were successful in convincing the trial court to accept this tortured reading of the Disclosure. CP 80. The trial court committed an error of law when it accepted this interpretation of the Drainage Disclosure. The City respectfully requests that the Court of Appeals reverse this error of law on review.

The facts relevant to this issue are not in dispute. Plaintiffs' admit that the interceptor pipe is located on Tract 999, which is an individual lot within the Plat, designated as open space. *Pls' Response*, p. 12. Plaintiffs also admit that Tract 999 is owned by the Homeowner's Association. *Pls' Response*, p. 12. Recall that the Disclosure states: "special and/or

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extraordinary drainage controls may be necessary on **individual lots**."

Given these facts, and the plain reading of the Disclosure, it is clear that the recorded Drainage Disclosure applies to all lots within the Plat, including Tract 999. The trial court committed reversible error when it held otherwise and this error should be corrected on appeal.

CONCLUSION

Based on the above undisputed facts and law, the City asks the Court of Appeals to overturn the trial court's order granting Plaintiffs' motion for partial summary judgment and denying the City's cross-motion for summary judgment. In addition, the City also asks this Court to grant the City's cross-motion and dismiss this case as a matter of law.

Respectfully submitted this 21st day of December, 2012.

KEATING, BUCKLIN & MCCORMACK, INC., P.S.

By: Stephanie Croll
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Attorneys for Defendant/Appellant
City of Bothell

Joseph Beck, per approval
Joseph N. Beck, WSBA No. 28789
City Attorney, Defendant/Appellant
City of Bothell

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APPENDIX D

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CTRIMEDC\47QS

TRIMEN DEVELOPMENT CO.

(206) 486-1700
(206) 486-1920

DRAINAGE DISCLOSURE

8711090361

I/We, the owner(s) of that certain property, situated in unincorporated Snohomish County, Washington, being legally described as attached: See Schedule "A".

and bearing Assessor's Tax Account No (s): 414-00-010-010 and 4146-000-010-0104 have applied for and been granted PLAT APPROVAL for the Plat of CRYSTAL RIDGE Division 2 by Snohomish County Hearing Examiner pursuant to Chapter 19.40 Snohomish County Code. The official case record has been assigned county file number ZA8405140 and may be viewed in the office of the Department of Community Affairs, 4th floor, County Administration Building, Everett, WA during normal business hours.

The filing of the document:

1) Constitutes the current acknowledgment of the conditions and terms of Plat Approval for the Plat of Crystal Ridge pursuant to the Hearing Examiners decision dated Oct. 11, 1984, to wit:

That this document has been recorded with the County Auditor disclosing to all the following:

Substantial surface and subsurface drainage controls have been necessary in the development of the subject property, and that special and/or extraordinary drainage controls may be necessary on individual lots.

2) Constitutes the current owners acknowledgment of the current terms and conditions under which Approval was granted.

3) Serves as notice to any heir, successor, assign or prospective purchaser the disclosures and terms and conditions runs with the land pursuant to Section 19.40 SCC and the compliance and/or knowledge are the obligation of any owner of the subject property.

This condition has been issued without expiration date.

Dated this 29 day of OCTOBER, 1987.

TRIMEN DEVELOPMENT COMPANY

PER KEN WOLCOSKI 11/2/87
(Owner - TYPE IN NAME) (Owner - Signature)

8711090361

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@TRIMEDC\47QS

TRIMEN DEVELOPMENT CO.

(206) 486-1700
(206) 486-1920

19414 WOODINVILLE ROAD
WOODINVILLE WA 98072

State of Washington)
)
County of Snohomish)

On this 9 day of November, 1987, before me, the undersigned a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kenneth Stanley Wolanski
~~and~~ WDL WOLFOK559BKP
to me known to be the ~~_____~~ President and Secretary, respectively, of TRIMEN DEVELOPMENT CO.
the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated ~~the~~ THAT HE WAS authorized to execute the said instrument ~~and that the seal affixed is the corporate seal of said corporation.~~
Witness my hand and official seal hereto affixed the day and year first above written.

Vicki Reeves-Fuller
Notary Public in and for the State of Washington, residing at Monroe
Com Exp 2/1/89

NOTARY PUBLIC STATE OF WASHINGTON

87 NOV -9 PM 3:46
DEAN A. WILLIAMS, AUDITOR
SNOHOMISH COUNTY, WASH
BY Vicki Fuller

RECORDED

8711090861

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SCHEDULE A
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The land referred to in this certificate is situated in the county of Snohomish, state of Washington, and described as follows:

A portion of Tracts 10, 11, 12 and 13, Plat of Crystal Springs Interurban Tracts, according to the plat thereof recorded in Volume 8 of Plats, page 36, in Snohomish County, Washington, also a portion of vacated 5th Avenue Southeast and 7th Avenue Southeast, all described as follows:

Beginning at the southwest corner of Tract 26, Plat of Clifford's Bothell Farms, according to the plat thereof recorded in Volume 11 of Plats, page 12, in Snohomish County, Washington;
thence north 0°08'21" west, along the west line of said Plat of Clifford's Bothell Farms begin the east line of said vacated 7th Avenue Southeast, for 942.31 feet to the southeast corner of the Plat of Brentwood, according to the plat thereof recorded in Volume 37 of Plats, pages 197 and 198, in Snohomish County, Washington;
thence south 89°30'15" west, along the south line of said Plat of Brentwood being also the north line of Tract 13, said Plat of Crystal Springs Interurban, for 529.05 feet to the northwest corner of said Tract 13;
thence south 0°06'30" east, along the west line of said Plat of Crystal Springs interurban tracts, being the centerline of 5th Avenue Southeast, vacated, for 1385.50 feet to a point 350.0 feet north of the southwest corner of said Tract 10;
thence north 89°37'00" east, along a line 350.0 feet north of the south line of said Tract 10, for 135.0 feet;
thence south 0°07'11" east, along a line 135.0 feet east as measured at right angles to the west line of said Tract 10, for 350.0 feet to the south line of said Tract 10;
thence north 89°37'00" east, along the south line thereof to the southeast corner of the corrected Plat of Crystal Ridge, according to the plat thereof recorded in Volume 47 of Plats, pages 233 through 235, inclusive, in Snohomish County, Washington;
thence north 0°07'11" west, along the west line of Tract "B" of said corrected Plat of Crystal Ridge, for 388.65 feet;
thence continue along boundary of Tract "B" for 496.76 feet;
thence north 89°33'52" east, along the north line of said Tract "B" for 15.0 feet to the true point of beginning.

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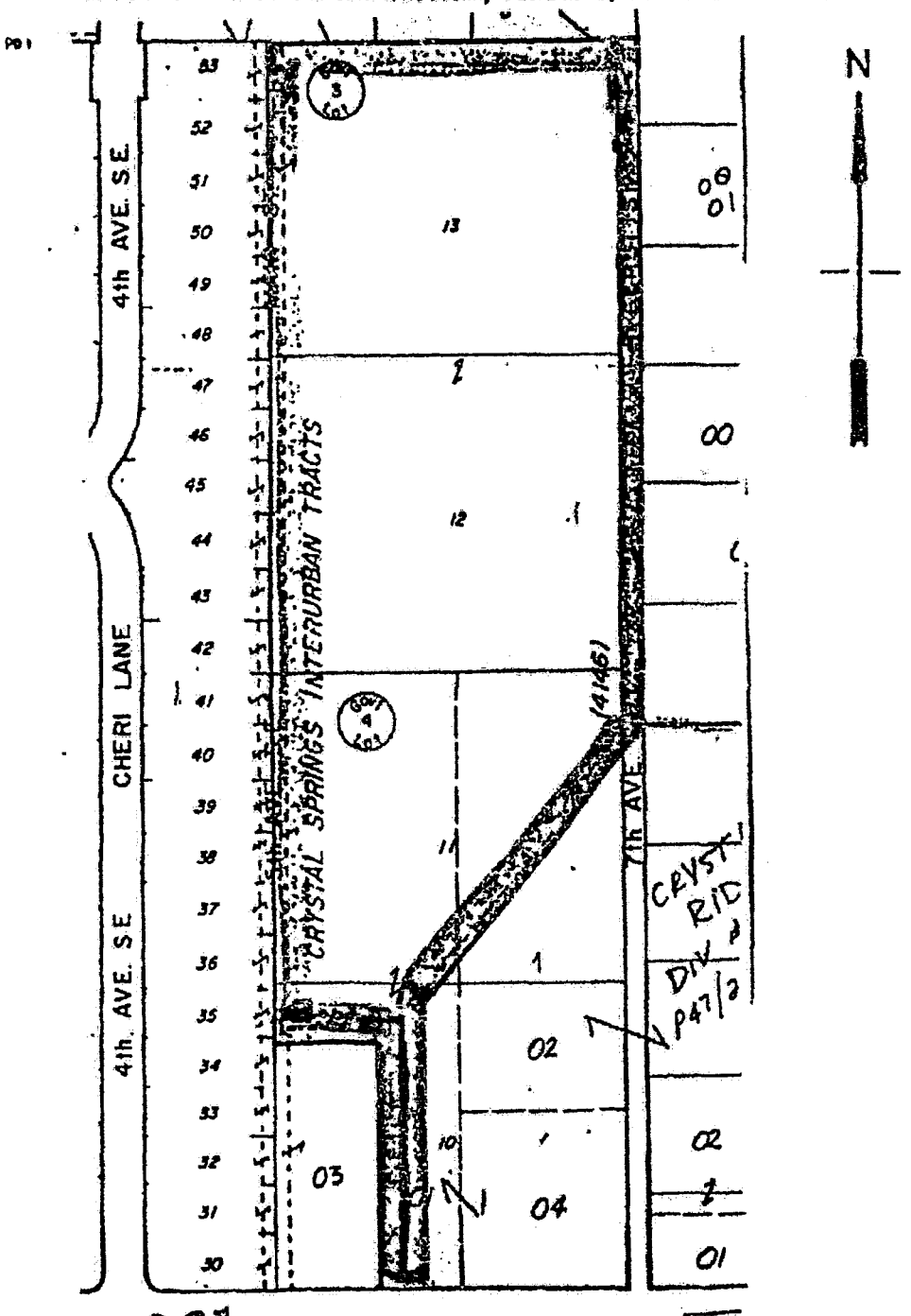
ADD. 1

Snohomish County, Inc.

SCHEDULE "A"
PAGE 2

ORDER NO. 6739

IMPORTANT: This is not a Plat of Survey. It is furnished as a convenience to locate the land indicated hereon with reference to streets and other land. No liability is assumed by reason of reliance hereon.



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App. 1

OFFICE RECEPTIONIST, CLERK

From: Dan Heid <dheid@auburnwa.gov>
Sent: Wednesday, November 20, 2013 4:16 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'kwillie@tmdwlaw.com'; 'mdaudt@tmdwlaw.com'; 'bneunzig@tmdwlaw.com'; 'SCroll@kbmlawyers.com'; 'Joe.Beck@ci.bothell.wa.us'
Subject: WSAMA Amicus request - Motion and Brief - Crystal Ridge v Bothell - - No. 89533-3
Attachments: Crystal Ridge v Bothell - WSAMA Amicus Motion.pdf; Crystal Ridge v Bothell - WSAMA Amicus Brief.pdf; Crystal Ridge v Bothell - WSAMA Transmittal Letter to Supreme Court.pdf

Dear Mr. Carpenter:

Attached hereto please find an electronic copy of the Motion for Leave to file Brief of Amicus Curiae and Brief of the Washington State Association of Municipal Attorneys in the above-referenced case. I am also including an electronic copy of a cover letter. Also, in addition to mailing my pleadings to counsel of record, per the certificate of mailing (appended to the Motion), for their convenience, I am also cc'ing them with this e-mail.

Please let me know if you have any questions. Thank you.

Daniel B. Heid
Auburn City Attorney
(253) 931-3030
dheid@auburnwa.gov

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