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NO. 97507-8  
(Court of Appeals No. 77935-4-I)

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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SHARON KAY and JIM HOWE,

Respondents,

and

THOMAS and MARIE DICKENS,

Defendants,

vs.

KING COUNTY, a municipal corporation,

Petitioner.

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APPEAL FROM KING COUNTY SUPERIOR COURT  
Honorable Catherine D. Shaffer, Judge

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PETITION FOR REVIEW

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## I. NATURE OF THE CASE

King County worked to fulfill the purposes of RCW 8.25.075 and tried to settle this case. King County wanted to resolve this case. The County offered \$552,000. But the property owner would not settle for any amount less than \$1 million.

At trial, Kay asked for a finding of a total taking. Kay presented evidence that her home was of exceptional quality and her expert's appraisal value assumed that was true. Kay testified her property was worth \$700,000. The jury did not find a total taking. The jury found a partial taking that minimally diminished the value of Kay's property. The jury concluded the property had a value of \$585,000 and the fair market value was \$650,000 for a partial taking in the amount of \$65,000. Interest was added to the \$65,000 and the court entered judgment of \$96,221.37.

Kay moved for an award of attorney fees under RCW 8.25.075(3) arguing she had received \$681,221.37 compared to King County's \$552,000 offer. The superior court denied Kay's motion accepting King County's position that Kay's judgment of \$96,221.37, was much less than the County's \$552,000 offer. Kay appealed.

Many months after the trial, King County learned the home's condition was substantially worse than it was portrayed in evidence presented at trial. Kay's appraisal value was based on this faulty

assumption. The post-trial inspection of the home called into question the basis upon which the jury reached its determination of fair market value and the corresponding diminished value amount for the partial taking. These amounts form the basis of Kay's trial and appellate theories.

Division I of the Court of Appeals reversed the superior court's order and remanded for entry of an award of attorney's fees and expenses under RCW 8.25.075(3). Division I rewrote RCW 8.25.075(3), adding language not contained in the statute. King County respectfully petitions the Court to review the Court of Appeals' decision and reinstate and affirm the superior court's decision.

## **II. ISSUES PRESENTED**

1. Should this Court accept review where Division I's decision rewrites the language of RCW 8.25.075(3) to impose an obligation to pay attorney fees to a property owner who obtained a judgment less than that highest written offer of settlement and thus creates an issue of substantial public interest which this Court should decide? RAP 13.4(b)(4).

2. Should this Court accept review where Division I's decision imposes an unworkable situation for the acquiring agency trying to settle an inverse condemnation claim and thus creates an issue of substantial public interest which this Court should decide? RAP 13.4(b)(4).

3. Should this Court accept review where Division I's decision is premised on the jury's conclusion that the Kay property was valued at \$650,000 and new evidence reveals Kay's home was vastly inferior in condition and quality to that which was portrayed at trial? RAP 9.11.

### III. STATEMENT OF FACTS

Plaintiffs Kay and Howe sued King County for inverse condemnation. (CP 1-10) Howe has no ownership rights in the property. (CP 70-71, 76) Therefore, the remainder of this petition refers to Kay only.

The County tried to settle the case. The County offered to settle for \$400,000, without a requirement that Kay transfer title to the property. (CP 123, 129) In December 2016, the County increased its offer to \$450,000, again without requirement that Kay transfer title to the property. (CP 123, 129) In August 2017, more than thirty days before trial, the County submitted a written offer of settlement for \$552,000. (CP 101-02, 131-32)

The County's offer was based on an appraisal report. (CP 139) The offer was only \$18,000 less than Kay's appraiser report of \$570,000. (CP 139) Kay rejected the County's offer. (CP 134-35) Kay believed her property was worth \$700,000. (10/2/2017 RP 34)<sup>1</sup> (see footnote 2 infra). She demanded \$1,275,000 to settle the case. (CP 139)

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<sup>1</sup> The transcript should be dated 10/2/2017 rather than 10/1/2017, which was a Sunday.



A jury trial was held from September 19, 2017, to October 16, 2017. (CP 75) At trial, Kay presented evidence regarding the condition of her home. Jim Howe, Kay's longtime partner, testified that he was remodeling the home (9/26/2017 RP 19)<sup>2</sup> He rewired the entire home and expanded the kitchen. (9/26/2017 RP 20) At the time of trial, he testified that the remodeling was completed except for the "finish work." (9/26/2017 RP 40-41) Sharon Kay testified that based on Jim Howe's belief, the house was worth \$700,000. (10/2/2017 RP 34) Richard Hagar, an appraiser, testified for the plaintiffs. He appraised the Kay property in November 2016 and concluded, based on the assumption that the remodeling was complete, its value was \$570,000. (10/3/2017 RP 65, 67-69)

Kay asked the jury to find inverse condemnation and a total taking and award a fair market value for her property. Kay alternatively asked the jury to find a partial taking and, if there was a partial taking, the diminished value of the property. (CP 47, 56, 58) The jury found no total taking. (CP 70) The jury found a partial taking that damaged the value of Kay's property in the amount of \$65,000, concluding that the property had a value of \$585,000 and the fair market value was \$650,000. (CP 71-72) Adding

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<sup>2</sup> See Appendix C - Excerpts of Trial Proceedings Transcripts: 9/26/2017, 10/2/2017, and 10/3/2017. Appellants did not order a Verbatim Report of Proceedings for the appellate record in the Court of Appeals. Copies are provided from the daily transcripts of the trial Court Reporters.

prejudgment interest, the court entered judgment of \$96,221.37 on Kay's inverse condemnation claim. (CP 75) A copy of the Judgment on Verdict is attached hereto as Appendix F.

Kay moved for attorney fees under RCW 8.25.075(3) arguing King County's highest offer did not exceed the judgment by at least ten percent. (CP 78-79) The trial court denied the motion for fees. (CP 158-59) Kay appealed. (CP 160-63)

On June 3, 2019, the Court of Appeals, Division I, issued its unpublished decision reversing the superior court's order and remanded "with instructions to enter an appropriate award of attorney fees to Kay." Opinion at page 13. Division I concluded that "[b]ecause [Kay's] request [for attorney fees] was denied contrary to the letter and intent of the statute governing attorney fee awards in inverse condemnation actions, we reverse." Opinion at page 1. Division I adopted a "qualifying offer" approach. Division I also added contract principle language to the statutory language. The Court ruled the amount the plaintiff retains after a trial is the amount to analyze for purposes of RCW 8.25.075(3). Rather than use the judgment amount, Division I concluded that if, after trial, plaintiff retains an amount that exceeds by ten percent or more the amount of the offer had plaintiff accepted the offer, the plaintiff is entitled to attorney fees.

King County's motion for reconsideration was denied. A copy of the Opinion and that court's July 2, 2019, order denying reconsideration are attached hereto as Appendix A and Appendix B respectively. King County asks this Court to accept review.

Six months after the trial, in April 2018, King County had the Kay property inspected and learned that the home was not in the condition as portrayed at trial. See Appendix D, Inspection Report dated April 27, 2018.<sup>3</sup> The home looked like a construction zone with missing doors, debris everywhere, and incomplete drywall. The inspector found the electrical system throughout the house was incomplete and unsafe. *Id.* The kitchen needed remodeling. The shower was missing from the master bedroom and there was no waste plumbing. *Id.*

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<sup>3</sup> See RAP 9.11, which provides in relevant part “[t]he appellate court may direct that additional evidence . . . be taken . . . if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party’s failure to present the evidence to the trial court, (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expense, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.”

#### IV. ARGUMENT

##### A. THE COURT OF APPEALS DECISION CONFLICTS WITH WASHINGTON'S RULES OF STATUTORY CONSTRUCTION.

This case raises an issue of substantial public interest which this Court should decide. RAP 13.4(b)(4). Division I's decision ignored the established rules of statutory construction. The decision added language to RCW 8.25.075(3) and overlooked legislative intent.

Statutory construction begins with the language the legislature used in the statute. *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). The primary goal in analyzing statutes is to give effect to the legislative intent. The intent is derived from construing the language as a whole and giving effect to every provision. *Costich*, 152 Wn.2d at 470, citing, *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

The plain meaning of the statute is derived not only from the statute at hand, but also "all that the Legislature has said in the ... related statutes which disclose legislative intent about the provision in question."

*State v. Costich*, 152 Wn.2d at 470 citing *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002), quoted in *J.P.*, 149 Wn.2d at 450, 69 P.3d 318.

RCW 8.25.075(3) states:

A superior court rendering a judgment for the plaintiff awarding compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner shall award or allow to such

plaintiff costs including reasonable attorney fees and reasonable expert witness fees, but only if the judgment awarded to the plaintiff as a result of trial exceeds by ten percent or more the highest written offer of settlement submitted by the acquiring agency to the plaintiff at least thirty days prior to trial.

Division I's decision adds language to the statute. Division I adds several phrases to RCW 8.25.075(3). First the Court reads into the statute the phrase "qualifying good faith settlement offer." Opinion at page 7. The Court states the settlement offer constitutes a "qualifying" offer if it "allows for application of the statutorily required comparison." *Id.* The Court also adopts Kay's contention that RCW 8.25.075(3) requires a comparison of the "value" of the offer to the "value" of the final judgment. Opinion at page 12. None of this language is contained in RCW 8.25.075(3).

RCW 8.25.075(3) does not contain the word "qualifying." RCW 8.25.075(3) does not contain the word "comparison." RCW 8.25.075(3) does not contain the word "value." By adding words to the statute, the Court of Appeals decision conflicts with the established Washington law that a statute's meaning is derived from its language. *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). A court should not "add language to an unambiguous statute even if it believes the Legislature intended something else but did not adequately express it." *Kilian*, 147 Wn.2d at 20, *citing*,

*Wash. State Coalition for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 904, 949 P.2d 1291 (1997).

Not only does Division I's decision add words to RCW 8.25.075(3), the Court of Appeals read contract principles into the statute to construe the terms of a settlement offer. The Court of Appeals concludes that to apply the statute, King County's settlement offer must be analyzed using contract principles. Opinion at 7. RCW 8.25.075(3) does not state attorney fees and expenses are awarded when the settlement offer, if it had been accepted, is compared to the judgment awarded to the plaintiff. The statute expressly states fees are awarded if "the judgment awarded to the plaintiff as a result of trial exceeds by ten percent or more the highest written offer of settlement." RCW 8.25.075(3). Had the legislature intended to mean the judgment awarded as a result of the trial must exceed by ten percent the written offer of settlement "if accepted," the legislature would have included those words or words to that effect. *State v. Delgado*, 148 Wn.2d 723, 728-29, 63 P.3d 792 (2003); *State v. Slattum*, 173 Wn. App. 640, 655-56, 295 P.3d 788, *rev. denied*, 178 Wn.2d 1010 (2013). The Court of Appeals decision rewrites the statute.

The Court of Appeals cites to *Sherrod v. Kidd*, 138 Wn. App. 73, 75, 155 P.3d 976 (2007) and *Stottlemire v. Reed*, 35 Wn. App. 169, 171, 665 P.2d 1383, *rev. denied*, 100 Wn.2d 1015 (1983). Neither *Sherrod* nor

*Stottlemyre* speak to the question of whether an acquiring agency's written offer of settlement exceeded the judgment awarded to a plaintiff as a result of a trial. Each case involved whether or not a settlement agreement was enforceable.

Here there was no settlement agreement. King County made a written offer of settlement. Kay did not accept the offer of settlement. Superimposing the concepts of what constitutes an acceptance or settlement agreement onto RCW 8.25.075(3) is inconsistent with established Washington law prohibiting a court from reading into a statute matters that are not in the statute. *Killian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002).

Finally, Division I's decision disregards the legislative intent—that the attorney fee provision is a narrow exception to the general rule of non-recovery of litigation expenses in condemnation actions. *Daviscourt v. Piestrup*, 40 Wn. App. 433, 444, 698 P.2d 1093, *rev. denied*, 104 Wn.2d 1008 (1985). The primary purpose of the attorney fees provision is to encourage settlement. *Cascade Sewer Dist. v. King Cty.*, 56 Wn. App. 446, 450, 783 P.2d 1113 (1989).

The *Cascade Sewer* Court rejected the argument that only private condemnees are entitled to award of attorney fees. The *Cascade Sewer District* court noted:

Our analysis of RCW 8.25.075 begins with the observation that this statute was enacted to bring Washington in conformity with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 so that state and local governments could obtain financial aid in real property acquisitions. *Daviscourt*, 40 Wash. App. at 442, 698 P.2d 1093; *see also* House Trans. Comm. Report, SSB 770, 42nd Legislature, 1st Ex. Sess. (1971). The federal act "has been strictly construed as creating only a narrow exception to the general rule of nonrecovery of litigation expenses [in condemnation cases]."

56 Wn. App. at 449. By adding words and concepts that are not contained in the statute, Division I altered the statute's meaning and changed the narrow exception to recovery of litigation expenses into a broad path for recovery of litigation expenses.

Here King County's written offer of settlement in the amount of \$552,000 far exceeded the \$65,000 reduction of value found by the jury and the \$196,221.37 "judgment awarded to the plaintiff as a result of trial."<sup>4</sup> RCW 8.25.075(3). King County respectfully requests that this Court to accept review and affirm the superior court's order.

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<sup>4</sup> The \$196,221.37 judgment amount consisted of \$50,000 to Kay and \$50,000 to Howe for negligence and nuisance, plus \$65,000 for inverse condemnation and \$31,221.37 in interest on the inverse condemnation. (CP 74-75)



**B. DIVISION I'S INTERPRETATION OF RCW 8.25.075(3) REWARDS A PROPERTY OWNER WHO WILL NOT SETTLE AND CREATES A CHALLENGE FOR THE GOVERNMENT AGENCY TRYING TO SETTLE.**

This case raises an issue of public importance. RAP 13.4(b)(4). Government entities working diligently to resolve a case are hampered when the property owner refuses to settle the case and then obtain a judgment which is much lower than the government's settlement offer. Allowing property owners to recover attorney fees and expenses under these circumstances allows the property owner to game the system and congest the courts with unnecessary litigation. Using Division I's analysis, the only way the County could have avoided paying fees and costs was to offer \$600,00 - an amount \$30,000 higher than the value assigned by Kay's appraisal. (CP 139)

The statutory scheme is designed to promote settlement and to ensure the governmental agency does not manipulate the process by making unreasonably low offers. The County complied with the statute and prevailed against appellant's total taking claim. The purpose of the attorneys' fee and costs provision of RCW 8.25.075 is, in part, "to reduce litigation and relieve congestion in the courts" and to "encourage settlement". *Cascade Sewer Dist. v. King Cty.*, 56 Wn. App. 446, 450, 783 P.2d 1113 (1989).

Here King County tried to settle the case. Kay would not accept a settlement for anything less than a total taking amount. During negotiations, Kay explicitly took the position the total taking offer was the “benchmark” the County had to come within 10% of. (CP 138) Kay asked the jury for a total taking. The jury rejected the total taking and found only a partial taking. (CP 70-72) The County offered Kay far more than the jury awarded her. (CP 101-02) Awarding fees to Kay rewards her and does not fulfill the purpose of RCW 8.25.075. The statute is not designed to award fees and costs under these circumstances.

This Court of Appeals decision creates a challenge for the government entity which is trying to settle. The Court of Appeals interpretation and application of RCW 8.25.075(3) requires the government to predict the outcome of the trial. Where the property owner is pursuing multiple theories of recovery, the government entity has to submit settlement offers that address every contingent outcome based on the property owner’s theories. Such a requirement is unworkable.

RCW 8.25.075(3) directs that only the “highest” offer is to be considered for purposes of an award of attorneys’ fees and costs. Where an inverse condemnation plaintiff will only accept settlement for a full taking (and argues for a full taking at trial), a “total taking” offer would necessarily be higher than any “partial taking” offer made. Because the court can only

consider the “highest” offer under the statute, where both a lower “partial taking” offer and a higher “total taking” offer are made, and the jury returns a verdict for a partial taking, there is no way for the government entity to guard against an award of fees and costs. The Court of Appeals decision endorses such an outcome which is fundamentally flawed and renders the statute unfair and unworkable.

**C. THIS CASE RAISES AN ISSUE OF SUBSTANTIAL PUBLIC IMPORTANCE BECAUSE DIVISION I’S DECISION REWARDS A PROPERTY OWNER WHO HAS PRESENTED EVIDENCE OF PROPERTY CONDITIONS WHICH WERE INCONSISTENT WITH REALITY.**

This Court will accept review if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4).

The jury’s determination of the fair market value of Kay’s property at \$650,000 was premised on evidence about the property condition that did not reflect reality. Kay presented evidence about the high quality and condition of the remodeled home, and her expert’s appraisal value wrongly assumed this was true. Six months after the jury’s verdict, an inspection revealed the home’s condition to be something else entirely. See Appendix C. The home looked like a construction zone. The remodeling was not at all complete. The kitchen needed remodeling. The electrical system in the home was deficient and unsafe. The master bedroom shower and tub were

not functional. It is unjust to permit a property owner who remains unwilling to settle to recover for attorney fees when the judgment entered was based on a jury verdict premised on inaccurate information. It is particularly unjust when the property owner spends one month in trial and seeks attorney fees of \$600,000, plus expert costs of \$180,000, based on a jury award of \$65,000.<sup>5</sup> (CP 75, 127)

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<sup>5</sup> See Appendix E - Plaintiff Kay's Motion for Statutory Attorneys Fees and Costs (CP 78-89); Declaration of Bradley B. Jones in Support of Plaintiff Kay's Motion for Statutory Attorney Fees and Costs (CP 90-114); Defendant's Response to Plaintiff Kay's Motion for Statutory Attorneys Fees and Costs (CP 115-22); Declaration of Timothy J. Repass in Support of Defendant King County's Response to Kay's Motion for Statutory Attorneys Fees (CP 123-40); Plaintiff Kay's Reply to Motion for Statutory Attorneys Fees and Costs (CP 141-54); Declaration of Stephen J. Tan in Support of Plaintiff Kay's Motion for Statutory Attorneys' Fees and Costs (CP 155-57); Order Denying Plaintiff Kay's Motion for Statutory Attorneys' Fees and Costs (CP 158-59).

V. CONCLUSION


This petition for review raises issues of public importance. King County respectfully requests that this Court accept review.

DATED this 1<sup>st</sup> day of August, 2019.

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

SHARON KAY and JIM HOWE,

Appellants,

v.

KING COUNTY SOLID WASTE  
DIVISION, a municipal corporation,

Respondent.

DIVISION ONE

No. 77935-4-1

UNPUBLISHED OPINION

FILED: June 3, 2019

DWYER, J. — Due to the negative impacts of a landfill operated by King County, nearby resident Sharon Kay brought a civil action in which she claimed that these effects amounted to a total taking of her property and, in the alternative, that these effects amounted to a partial taking.<sup>1</sup> After a trial, the jury found that Kay suffered a partial taking. Kay's subsequent request for an award of attorney fees was denied. Because her request was denied contrary to the letter and intent of the statute governing attorney fee awards in inverse condemnation actions, we reverse.

Sharon Kay lives in a house adjacent to the Cedar Hills Regional Landfill, a facility operated by the respondent King County Solid Waste Division (the County). In 2013, a pipeline break at the landfill led to the release of substantial

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<sup>1</sup> Plaintiff Jim Howe brought unrelated causes of action against the King County Solid Waste Division. These claims are not at issue in this appeal.



...  
[ANSWER:] Kay residential property           \$585,000

...  
QUESTION 10: As to any taking, what was the date that taking began?

...  
[ANSWER:] Kay residential property           December 7, 2013

Following the verdict, the trial court entered judgment. The judgment provided that the inverse condemnation had commenced on December 7, 2013, that Kay was entitled to \$65,000, the difference of her property's unimpaired fair market value and impaired value, and that prejudgment interest on these inverse condemnation damages totaled \$31,221.37. The judgment did not award the County fee title to Kay's property.

The trial court summarily denied Kay's subsequent motion for an award of attorney fees and costs.

II

When, as here, an appeal concerns the interpretation of a statute, we review the trial court's decision de novo. State v. Costich, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). Our primary objective is to give effect to the legislature's intent, derived by construing the language as a whole and giving effect to every provision. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003). If the language is unambiguous, we give effect to that language alone, as the legislature is presumed to mean what it says. State v. Radan, 143 Wn.2d 323, 330, 21 P.3d 255 (2001). If, however, the legislature's intent cannot be discerned from the plain text of the statute, we "resort to principles of statutory construction, legislative history, and relevant case law to assist us in discerning



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legislative intent.” Cockle v. Dep’t of Labor & Indus., 142 Wn.2d 801, 808, 16 P.3d 583 (2001).

The Fifth Amendment to the United States Constitution provides that private property may not be taken for public use “without just compensation.” Article 1, section 16 of the Washington Constitution similarly provides:

No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner . . . which compensation shall be ascertained by a jury.

Two avenues of relief are available to property owners, the value of whose property is totally or partially taken by government action. The first is a traditional eminent domain proceeding, wherein the government body (condemnor) seeks or has already obtained actual ownership of, or an ownership right in, private property so as to use it for public benefit. See, e.g., Pub. Util. Dist. No. 2 of Grant County v. N. Am. Foreign Trade Zone Indus., LLC, 159 Wn.2d 555, 565, 151 P.3d 176 (2007). In these cases, any settlement offer will necessarily be an offer to purchase the specific property right at issue. Because the condemnor is required to identify the specific property interest that it seeks to acquire, in contemplating settlement, the parties intend to place a value on the identified interest. Thus, when settlement discussions fail, a subsequently entered judgment will necessarily reflect the fair market value of the specific property right. See State v. McDonald, 98 Wn.2d 521, 525, 656 P.2d 1043 (1983). In such a case, a settlement offer can be easily compared to the final judgment, as each specifies a value for an interest that is conveyed by the judgment. See City of Seattle v. Seattle-First Nat’l Bank, 79 Wn.2d 490, 491, 487 P.2d 777 (1971).

No. 77935-4-1/5

In the end, in return for a payment, the condemnor receives both the extinguishment of the claim against it and conveyance and ownership of the identified specific interest in the property.

The second avenue of relief available to a property owner is an inverse condemnation action. An inverse condemnation occurs when the government takes or damages property without the formal exercise of the power of eminent domain. Dickgieser v. State, 153 Wn.2d 530, 534-35, 105 P.3d 26 (2005).

Damages in an inverse condemnation case are equal to the amount the property has diminished in fair market value. Petersen v. Port of Seattle, 94 Wn.2d 479, 482-83, 618 P.2d 67 (1980). A successful plaintiff will remain the owner of the property at issue but is awarded damages to compensate for the diminished fair market value of the property. The decline in value is measured as of the time of trial. Petersen, 94 Wn.2d at 482.

In many inverse condemnation cases, the question of whether a taking has in fact occurred becomes an issue for the trier of fact; the condemnee avers that the condemnor has damaged or taken some, most, or all of the value of the condemnee's property. See, e.g., Sintra, Inc. v. City of Seattle, 131 Wn.2d 640, 648, 935 P.2d 555 (1997). Thus, unlike in an eminent domain action, where the specific property interest at issue is known and the existence of a taking is not disputed, in many inverse condemnation actions the parties dispute not only the extent of liability but also the amount of the property interest taken or damaged and the value thereof. When the jury finds that only a partial taking has occurred,

the condemnee receives damages for the diminished value of the property while retaining full title and ownership thereof.<sup>2</sup> See, e.g., Petersen, 94 Wn.2d at 481.

The legislature has provided further protection for property owners asserting or defending condemnation claims. “The legislature has recognized that awards in eminent domain proceedings, though constitutional, may fall short of complete compensation because of litigation expenses.” Petersen, 94 Wn.2d at 487. To address this shortfall, RCW 8.25.070 provides for the payment of a condemnee’s attorney fees in eminent domain actions. RCW 8.25.075 provides similar protections for those pursuing inverse condemnation actions.

A superior court rendering a judgment for the plaintiff awarding compensation for the taking or damaging of real property for public use without just compensation having first been made to the owner shall award or allow to such plaintiff costs including reasonable attorney fees and reasonable expert witness fees, but only if the judgment awarded to the plaintiff as a result of trial exceeds by ten percent or more the highest written offer of settlement submitted by the acquiring agency to the plaintiff at least thirty days prior to trial.

RCW 8.25.075(3).

“RCW 8.25.075 clearly manifests a legislative intent that if a condemnor chooses to take property without instituting condemnation proceedings, the owner shall be reimbursed for his costs of litigation in obtaining his constitutionally guaranteed just compensation.” City of Snohomish v. Joslin, 9 Wn. App. 495, 500, 513 P.2d 293 (1973). Thus, RCW 8.25.075(3) protects landowners who might otherwise exhaust their resources in litigating a takings

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<sup>2</sup> The condemnee may not then bring a subsequent claim for damages already compensated, but may commence a new action should government activity lead to a further decline in the condemnee’s property’s value. Petersen, 94 Wn.2d at 486.

claim by ensuring they are compensated for their attorney fees and costs and, in this way, vindicating their right to full and fair compensation for their losses.

The requirement that a condemnor pay the condemnee's attorney fees may be avoided by a showing that the government entity made a qualifying good faith settlement offer, as defined in the statute. Once the government entity has shown that it has made such an offer, the condemnee must then show that the offer was insufficient, as defined in the statute. Thus, our first inquiry is whether the government made a qualifying settlement offer, i.e., one that allows for application of the statutorily required comparison. Our second inquiry involves conducting that comparison.

### III

"Settlement agreements are governed by contract principles 'subject to judicial interpretation in light of the language used and the circumstances surrounding their making.'" Sherrod v. Kidd, 138 Wn. App. 73, 75, 155 P.3d 976 (2007) (quoting Stottlemyre v. Reed, 35 Wn. App. 169, 171, 665 P.2d 1383 (1983)). Accordingly, a settlement offer must conform to the requirements of any other contract offer and must be analyzed as such.

"Since only in very exceptional circumstances can informal contracts be created except by a manifestation of assent of the parties to the terms of the promise and to the consideration for it, it is ordinarily necessary for one of the parties to propose to the other the promise which he will make for a certain consideration, or to state the consideration which he will give for a certain promise. That is, a proposal or offer is necessary." Wetherbee v. Gary, 62

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Wn.2d 123, 127-28, 381 P.2d 237 (1963) (quoting 1 WILLISTON, CONTRACTS § 23 (3d ed. 1957)). In other words, an offer must be sufficient to allow, if accepted, enforcement of promises by both parties set forth therein—it must contain a specific description of the consideration to be given by both parties.

The County's settlement offer did contain a specific description of both parties' consideration—it provided for payment of \$552,000 to Kay in exchange for the extinguishment of her inverse condemnation claim and the conveyance of title to the property at issue to the County. We analyze these elements of consideration as part of the County's offer when comparing it to the final judgment.

#### IV

It is the meaning of the statute as it applies to the County's offer that is at the heart of the parties' dispute. The County urges that the statute is unambiguous and that, per a plain language reading, its settlement offer was sufficient to excuse payment of attorney fees. Kay urges that the statute is ambiguous, and that the intent of the legislature was to require comparison of the value of the settlement offer against the value of the final judgment.

#### A

The County advocates a plain language reading of the statute. Unambiguous language is given its plain meaning without adding language to the statute. Cerrillo v. Esparza, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). "Courts may not read into a statute matters that are not in it and may not create

No. 77935-4-1/9

legislation under the guise of interpreting a statute.” Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) (footnote omitted).

The County contends that its offer was sufficient to meet the requirements of RCW 8.25.075(3) because the amount of money awarded by the final judgment was substantially less than its settlement offer—the County offered to pay Kay \$552,000 before trial, and Kay was awarded damages of only \$96,221.37. The County is wrong.

In arguing as it does, the County misapprehends its own offer. The County did not offer to pay Kay \$552,000 in exchange for extinguishment of her cause of action. Rather, the County offered to pay \$552,000 to Kay in exchange for the dismissal of her claims against the County *and* conveyance of fee title to her property to the County. But the final judgment did not award the County title to Kay's property. It only awarded the County extinguishment of Kay's claims upon payment of the amount due.

The plain text of RCW 8.25.075(3) requires that a private landowner be awarded attorney fees in an inverse condemnation action except in the event that the condemnor can show that the final judgment after trial did not exceed, by 10 percent or more, the highest written offer submitted by the condemnor to the condemnee at least 30 days before trial.

When we view the statute according to its plain words, it is clear that the County did not tender a qualifying offer. The final judgment was not comparable to the highest written offer made by the County prior to trial. The final judgment provided Kay \$65,000 in inverse condemnation damages, plus prejudgment

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interest from the date the damage commenced to the date of judgment—a total of \$96,221.37. This judgment allowed Kay to retain title to her property.

The County's offer did not include any payment for damages. Instead, it required Kay to sell her property to the County, thereby extinguishing her condemnation claim. This was an entirely different bargain than that which is embodied in the judgment. Pursuant to the settlement offer, Kay would have received \$552,000 in exchange for dismissal of the inverse condemnation claim and transfer of title to her property to the County. Under the final judgment, she may continue to live on and own her property and was granted \$96,221.37.

The County's interpretation of RCW 8.25.075(3) is untenable. Its entire focus is on the amount of money it offered to pay—it ignores the consideration it demanded in return. Indeed, the County glosses over the clear difference between an offer that requires the conveyance of title to real property and one that does not. Under the plain language construction of the statute that it urges we adopt, its settlement offer cannot be compared to the final judgment. Thus, it failed to make a qualifying offer.

As stated above, a valid offer requires a clear description of the consideration to be furnished by both parties should it be accepted. Wetherbee, 62 Wn.2d at 127-28. An offer to give a sum of money with nothing expected in return is simply a gratuitous promise and is too indefinite to be enforced. Huberdeau v. Desmarais, 79 Wn.2d 432, 439-40, 486 P.2d 1074 (1971). By contrast, a contract sets forth terms that, if accepted, may be readily enforced. Were the County's written settlement offer to Kay accepted, the County would be

able to seek specific performance to require Kay to convey title, while Kay would be able to seek a monetary remedy if the County failed to tender payment. The final judgment, however, differed materially from the terms of the offer, as it awarded Kay damages without requiring the conveyance of title to the land.

B

For her part, Kay avers that the wording of the statute is ambiguous, and that the intent of the legislature was to require comparison of the value of the settlement offer against the value of the final judgment. To discern this intent, Kay directs us to the statutory scheme within which RCW 8.25.075 exists. "The principle of reading statutes in pari materia applies where statutes relate to the same subject matter." Hallauer v. Spectrum Props., Inc., 143 Wn.2d 126, 146, 18 P.3d 540 (2001). "In ascertaining legislative purpose, statutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes." State v. Wright, 84 Wn.2d 645, 650, 529 P.2d 453 (1974). In conducting our analysis herein, we look to RCW 8.25.075's similarly worded companion statute, RCW 8.25.070. Both statutes cover the award of attorney fees in condemnation actions.

"The purpose of RCW 8.25.070 is to encourage settlement before trial and ensure that each side makes a good faith effort to settle." Olympic Pipe Line Co. v. Thoeny, 124 Wn. App. 381, 399, 101 P.3d 430 (2004).<sup>3</sup> It is a reasonable

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<sup>3</sup> RCW 8.25.075 was enacted, and RCW 8.25.070 amended, as part of the Relocation Assistance and Real Property Acquisition Policy Act, Laws of 1971, 1st Ex. Sess., ch. 240. This act was passed so that state and local governments could obtain financial aid in acquiring real property by meeting the requirements of the federal Uniform Relocation Assistance and Real



inference that the legislature's intent was to ensure just compensation for property owners in inverse condemnation actions and to encourage good faith settlement offers. Joslin, 9 Wn. App. at 500. Both section .070 and section .075 do this by excusing public entities from paying attorney fees when a final judgment's *value* does not exceed by 10 percent the *value* of the highest written settlement offer.

The value of the final judgment herein is readily ascertainable: Kay was allowed to retain title to her property, which the jury found to have an impaired value of \$585,000, and received \$65,000 in damages to cover the difference between the impaired value and that which the jury found would be the property's unimpaired value: \$650,000. In addition, she was awarded prejudgment interest in the amount of \$31,221.37.<sup>4</sup> Adding this to the \$585,000 value of the property and the \$65,000 she received in damages, the value to Kay of the final judgment on her inverse condemnation claim was \$681,221.37.

The value to Kay of the settlement offer was substantially less. Had Kay accepted the settlement offer, she would have received \$552,000. But her claims would have been extinguished and she would have had to convey her property to the County. Contrasted with the \$681,221.37 value of the final judgment, it is plain that the value of the judgment (\$681,221.37) exceeds by well over 10 percent the value of the County's highest written settlement offer (\$552,000).

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Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4654, 4655, that litigation expenses, including attorney fees, be paid in certain cases.

<sup>4</sup> Prejudgment interest may be awarded to successful inverse condemnation plaintiffs and, when it is, becomes part of the judgment awarded as a result of trial. Sintra, Inc., 131 Wn.2d at 656-57; accord Costich, 152 Wn.2d at 474-75.

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The divergence between what would have been required under a settlement as proposed by the County and the final judgment highlights the folly of construing the offer merely as that which the County promised to give while ignoring that which it demanded in return.

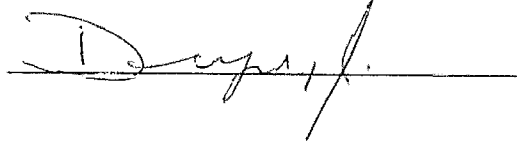
Accepting the County's reading of the statute would produce unjust results in future litigation. Any inverse condemnee, bringing a suit to recover the difference between the impaired and unimpaired value of his or her property, would be denied an award of attorney fees so long as the condemnor made an offer to purchase the *entire* property in an amount greater than the damages being sought. This would place condemnees in a position of either accepting an offer to sell their property for less than its fair market value or continuing to litigate the inverse condemnation action without hope of recovering necessary litigation expenses. Such a state of affairs would essentially put an end to the government's risk in such a lawsuit, frustrating the legislature's goal. Courts are not required to read statutes in a manner that would lead to absurd or unjust results. Univ. of Wash. v. City of Seattle, 188 Wn.2d 823, 834, 399 P.3d 519 (2017).

Regardless of whether RCW 8.25.075 is viewed as ambiguous or unambiguous, the County loses. Accordingly, we reverse and remand to the trial court, with instructions to enter an appropriate award of attorney fees to Kay. As Kay prevails in this appeal, we also exercise our discretion to grant her reasonable attorney fees on appeal pursuant to RAP 18.1. Upon compliance with that rule, a commissioner of our court will enter an appropriate order.

No. 77935-4-II/14

Reversed and remanded.

WE CONCUR:

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

SHARON KAY and JIM HOWE,

Appellants,

v.

KING COUNTY SOLID WASTE  
DIVISION, a municipal corporation,

Respondent.

DIVISION ONE

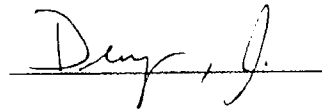
No. 77935-4-I

ORDER DENYING MOTION  
FOR RECONSIDERATION

The respondent having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:

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SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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SHARON KAY and JIM HOWE, and ) VERBATIM REPORT OF  
 THOMAS and MARIE DICKENS, ) THE PROCEEDINGS  
 Plaintiff, ) CAUSE NO. 15-2-08235-3KNT  
 Versus )  
 KING COUNTY, a municipal )  
 corporation, )  
 Defendant. )

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TRANSCRIPT

OF THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE BEFORE THE HONORABLE CATHERINE SHAFFER, SUPERIOR COURT JUDGE, ON THE 26TH DAY OF SEPTEMBER, 2017, TRANSCRIBED BY KIMBERLY GIRGUS, CERTIFIED COURT REPORTER.

APPEARANCES:

FOR THE PLAINTIFF KAY & HOWE: BRADLEY JONES  
 RUEBEN SCHUTZ  
 ATTORNEYS AT LAW

FOR THE PLAINTIFF DICKENS: STEPHEN TAN  
 VALERIE FAIRWELL  
 ATTORNEYS AT LAW

FOR THE DEFENDANT KING COUNTY: TIMOTHY REPASS  
 PHILIP GRENNAN

I N D E X

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EXAMINATION BY PLAINTIFF

JIM HOWE

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DR. MICHAEL GARRY

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WALTER GRANT

DIRECT EXAMINATION BY MR. JONES. . . .PAGE 99

1 Q. How long would they last?

2 A. Not long. Probably 15 minutes.

3 Q. Did they affect you in any way at that time?

4 A. No.

5 Q. Did they cause you to have to change any of your  
6 activity?

7 A. No.

8 Q. Did it ever cause, prior to December 7th of 2013, did any  
9 landfill odors ever cause you to leave your property?

10 A. No.

11 Q. Again, before we get to December 7, 2013, I want to talk  
12 about a remodel. Are you currently engaged in a remodel  
13 of your home?

14 A. Yes.

15 Q. When did you start?

16 A. We started the remodel in 2011.

17 Q. And what was the -- what caused you to start a remodel of  
18 your home?

19 A. There was a water leak behind the kitchen sink. To get  
20 access to it we had to remove all the base cabinets in  
21 the kitchen.

22 Q. And after you removed the base cabinets, what did you  
23 see?

24 A. I discovered that the wiring in the wall behind the  
25 kitchen sink had been chewed by mice, and the wires were

1 burned. So that expanded my work.

2 Q. So at that point what did you decide to do? So this  
3 initial stage, what did you decide to do?

4 A. At that point I had decided that the only safe thing was  
5 to turn the power off the house and rewire it.

6 Q. Rewire the kitchen or rewire the entire house?

7 A. The entire house.

8 Q. Now, what -- and again at that initial point back in  
9 2011, other than rewiring, were you thinking of doing  
10 anything else?

11 A. At the initial point we were just planning on reworking  
12 the kitchen.

13 Q. And what do you mean by reworking the kitchen?

14 A. We were going to add the laundry room, which was small,  
15 and make it part of the kitchen.

16 Q. Now, from the beginning when you first started planning  
17 this remodel, who were you anticipating would do the  
18 work?

19 A. Myself.

20 Q. What percentage of the work were you anticipating doing?

21 A. All of it.

22 Q. Was there any work -- well, did the remodel -- did the  
23 remodel grow?

24 A. I would say quite a lot.

25 Q. Okay. Why don't you kind of describe the process of the



1 fence line monitoring --

2 THE COURT: Can I ask the relevance of his  
3 understanding? Move to something else.

4 MR. REPASS: Okay.

5 EXAMINATION BY

6 MR. REPASS:

7 Q. At some point you, and you talked about this earlier, you  
8 decided to conduct and engage in a remodel project at  
9 your house. And I believe you said that that was started  
10 in 2011?

11 A. That is correct.

12 Q. And it's ongoing today?

13 A. That is also correct.

14 Q. Okay. And how much work on the remodel is left to be  
15 done in your mind?

16 A. At this point all the infrastructure work is done. All  
17 the plumbing, wiring, walls. What is left is the finish  
18 work.

19 Q. Okay.

20 A. With the exception that the garage ceiling needs to be  
21 reinstalled.

22 Q. And at some point during the remodeling project did you  
23 make a decision to reduce the quality of construction  
24 that you were going to put into the home?

25 A. The quality of the finishes, yes.

1 Q. Okay. So you chose a lesser quality of finishes for that  
2 area of remodel that you actually performed to date?

3 A. After the pipeline break, yes.

4 Q. Okay. Have you ever referred to the December 7th, 2013  
5 pipeline break as a minor event, to your knowledge?

6 A. I don't remember.

7 MR. REPASS: May I approach, your Honor?

8 THE COURT: Yes.

9 EXAMINATION BY

10 MR. REPASS:

11 Q. I want you to read through an e-mail here, sir. And  
12 specifically if you could go to page two. Take as much  
13 time as you would like to review the entire document, but  
14 I'm going to point to an e-mail from you to a gentleman  
15 named Buddy Backer from December 10th, 2013. So  
16 eventually if you want to look at that portion. And tell  
17 me if that refreshes your recollection as to whether or  
18 not you referred to the 2000 or the -- sorry.  
19 December 7, 2013 pipeline break as minor?

20 A. Yes, I did.

21 Q. Okay.

22 MR. REPASS: That's all I have. Thank you, sir.

23

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REDIRECT EXAMINATION

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C E R T I F I C A T E

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STATE OF WASHINGTON)

) SS.

COUNTY OF KING )

I, Kimberly H. Girgus, Certified Court Reporter; in and for the State of Washington, do hereby certify:

That to the best of my ability, the foregoing is a true and correct transcription of my shorthand notes as taken in the cause of SHARON KAY and JIM HOWE, and THOMAS and MARIE DICKENS versus KING COUNTY, a municipal corporation, on the date and at the time and place as shown on page one hereto;

That I am not a relative or employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney of counsel, and that I am not financially interested in said action or the outcome thereof;

Dated this 26th day of September, 2017.

\_\_\_\_\_  
Kimberly H. Girgus

Certified Court Reporter

PROCEEDINGS

October 1, 2017, morning session

1  
2  
3 THE COURT: Good morning, everybody. All  
4 right. Let's continue without pause on instruction  
5 number 9. And where we were I think was moving  
6 forward to dealing with the defenses in this case.  
7 Do we think we've covered the claims? I just want  
8 to double check.

9 MR. GRENNAN: Excuse me. What is that,  
10 your Honor?

11 THE COURT: Do we feel we've covered the  
12 claims before we move on to defenses?

13 MR. GRENNAN: I think we've covered to the  
14 extent that we know, I think the Court's  
15 inclination is to put the defense's claims, and  
16 then the plaintiffs and the defendant have to work  
17 together to craft language for that.

18 THE COURT: Well, let me hear your  
19 argument for why I should put the defenses up front  
20 here, if you have one.

21 Andrew, I'm missing the defense. Here we go.  
22 Go right ahead.

23 MR. GRENNAN: Yes, your Honor. And I  
24 think that was looking at the defendant's proposed  
25 instruction. It was 20.01, of course, the

1 And sometimes somebody who is awake, either our  
2 neighbor Ken Naito or Jim, if he's awake before I  
3 am, will say, oh, I think we got gas, or we find  
4 out that Ken has filed a report while we were  
5 asleep, and we say, oh, well, that's it then,  
6 that's why we feel this way in the morning.

7 Q Lastly, I'd like to talk a little bit about  
8 the value of your home and your property damages.  
9 If the conditions at your home were as they were  
10 before December 7th, 2013, when you didn't  
11 experience significant landfill gas exposure, if  
12 those were the conditions that prevailed today,  
13 what do you think your home would be worth?

14 A If we didn't have to make any disclosures like  
15 that, I'd say around 700,000.

16 Q And what's the basis for that opinion?

17 A Mostly I rely on Jim for that. I've also  
18 looked some online to see different things that are  
19 selling in the wider area. But Jim has the  
20 experience. He knows the neighborhoods. He knows  
21 how to do comps. He knows how to set prices.  
22 That's one of the things he's been really good at  
23 as a Realtor, and so I trust his opinion on that.

24 Q And has he shown you any comps that he's  
25 prepared?

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SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

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SHARON KAY and JIM HOWE, and	)	VERBATIM REPORT OF
THOMAS and MARIE DICKENS,	)	THE PROCEEDINGS
Plaintiff,	)	CAUSE NO. 15-2-08235-3KNT
Versus	)	
KING COUNTY, a municipal	)	MORNING SESSION
corporation,	)	
Defendant.	)	

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TRANSCRIPT

OF THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE BEFORE THE HONORABLE CATHERINE SHAFFER, SUPERIOR COURT JUDGE, ON THE 3RD DAY OF OCTOBER, 2017, TRANSCRIBED BY KIMBERLY GIRGUS, CERTIFIED COURT REPORTER.

APPEARANCES:

FOR THE PLAINTIFF KAY & HOWE: BRADLEY JONES

RUEBEN SCHUTZ

ATTORNEYS AT LAW

FOR THE PLAINTIFF DICKENS: STEPHEN TAN

VALERIE FAIRWELL

ATTORNEYS AT LAW

FOR THE DEFENDANT KING COUNTY: TIMOTHY REPASS

PHILIP GRENNAN

I N D E X

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EXAMINATION BY PLAINTIFF

DR. PAOLO ZANNETTI

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RICHARD JOSEPH HAGAR

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ANNETTE FITZSIMMONS

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1 wider price range. I mean, we were looking at sales as  
2 low as 375, and as high as about 750,000 or 800,000. We  
3 had looked at those houses on the MLS. We got photos,  
4 interior photos, and the like. And my knowledge of  
5 Mirrormont and the like. And then we had started to  
6 discard those. And we had whittled it down to well,  
7 let's put these three in. Let's see how this works or  
8 adding adjustments. Positive and negative. And if they  
9 all kind of correlate to a central point we are good. If  
10 they don't, then we have to start looking further afield,  
11 as I have described. And in this case three tended to do  
12 it because it's a more traditional two-story house.

13 Q. Did you reach any conclusions regarding the market value  
14 of the Kay residential property?

15 A. Yes, we did.

16 Q. What was that opinion?

17 A. 570,000.

18 Q. Okay. Finally, I want to turn to the vacant land owned  
19 by Tom Dickens.

20 A. Sure.

21 Q. This is approximately a four acre parcel; is that right?

22 A. Four. Almost five. Correct.

23 Q. Are there structures on this property?

24 A. No.

25 Q. So how does the process differ when you are appraising



1 I recall.

2 Q. I believe it's 177. But can you confirm that?

3 A. Sure. Yep. 177.

4 Q. Okay. You conducted these three appraisals back in  
5 October/November of 2016 as you have said. Have you done  
6 any evaluation to determine whether the values of these  
7 three properties has increased or decreased since then?

8 A. Yes.

9 Q. What have you done?

10 A. I have done a couple of things. Within our MLSs. Where  
11 the real estate agents keep all of the database. I'm  
12 able to define the neighborhood. The market area. In  
13 this case the Issaquah Creek Valley. And when we did  
14 these appraisals leading up to that October/November of  
15 2016 prices were increasing at a rate of roughly \$4,000 a  
16 month. For properties there. And since that time we  
17 simply did the very same search, the very same valley,  
18 and looked at how is the median, and average sales price  
19 of last year 2016 versus this year. And what we are  
20 seeing is that the prices are up, median and average  
21 about 15.5 percent over last year. And in some cases the  
22 median that's almost reaching \$9,000 a month in increase  
23 in value which is phenomenal.

24 Q. Okay. Now, you did not do a new appraisal after the one  
25 you did late last year of these three properties,

1 correct?

2 A. Not directly. I did pull sales. Current sales because  
3 not only did I do the average and median price change I  
4 wanted to see if I can find any sales that I might  
5 consider using in an appraisal today, and I found about  
6 eight of them. I pulled out two of them yesterday, and  
7 analyzed those, and they were also supporting. One of  
8 them was very, very similar to the Dickens' daylight  
9 rambler house. It was very similar to it, and it's also  
10 indicating that sales prices have increased since last  
11 year. If I were to do an appraisal and bring everything  
12 that -- no, two sales that I used. They were indicating  
13 a value today of somewhere in the 530 to 550 range.  
14 That's without looking at them in anymore detail.

15 Q. That's just based on those two additional properties you  
16 looked at?

17 A. Correct. Correct.

18 Q. How about if you applied the 15 percent? Talking about  
19 the Dickens' residential property. Your appraisal value,  
20 market value in November of last year was 500. By my  
21 calculation, applying a 15 percent appreciation to that  
22 gives you a result of \$557,000. Is that a valid or  
23 invalid approach estimating the market value of the  
24 Dickens' residential property today?

25 A. It's a valid approach.

1 Q. Okay. Is it the approach that you would use if you were  
2 asked to estimate the market value of the Dickens'  
3 residential property today?

4 A. It is one of those, and then I would try to back it up.  
5 I'd try not to rely upon a single source of that. And so  
6 I would back it up with looking at other sales, which I  
7 did. And both of those sales were also indicating things  
8 were in the 530 to 550 range. So I have got sales that  
9 are indicating an increased value, and I have the average  
10 and median market price within the neighborhood also  
11 indicating an increase in value over last year.

12 Q. All right. How about doing the same exercise with regard  
13 to the Kay residential property. Would it be appropriate  
14 in your opinion to estimate current market value by  
15 adding a 15 percent appreciation on the \$570,000 market  
16 value you assigned back in November?

17 A. Yes.

18 Q. Okay. And by my calculation that leaves a figure of  
19 655,500?

20 A. Correct.

21 Q. Would it be your opinion that the Kay property -- the  
22 market value of the Kay property today is \$655,500?

23 A. It can be. I have not backed up that data with a  
24 specific search for sales. So all we have is an average  
25 median price indicating that. I have the Dickens'

## C E R T I F I C A T E

STATE OF WASHINGTON)

) SS.

COUNTY OF KING )

I, Kimberly H. Girgus, Certified Court Reporter; in  
and for the State of Washington, do hereby certify:

That to the best of my ability, the foregoing is a  
true and correct transcription of my shorthand notes as  
taken in the cause of SHARON KAY and JIM HOWE, and THOMAS  
and MARIE DICKENS versus KING COUNTY, a municipal  
corporation, on the date and at the time and place as  
shown on page one hereto;

That I am not a relative or employee or attorney or  
counsel of any of the parties to said action, or a  
relative or employee of any such attorney of counsel, and  
that I am not financially interested in said action or  
the outcome thereof;

Dated this 3rd day of October, 2017.

---

Kimberly H. Girgus

Certified Court Reporter



# Inspection Report

15323 229th Ave SE  
Issaquah, WA 98027

**Report #:**  
180427A

**Client Name:**  
Eben Sutton

**Company Information:**  
Madrona Inspection Services  
10628 60<sup>th</sup> Ave S  
Seattle, WA 98178  
[www.madronainspections.com](http://www.madronainspections.com)

**Date:**  
4/27/2018

**Weather:**  
57 and overcast

**Inspector:**  
Thurston McMurray  
WA State Licensed Home Inspector #1275  
WSDA Structural Pest Inspector #88672



**APPENDIX D**

## **How to Read This Report**

**Chapters and Sections:** This report is divided into chapters that parcel the home into logical inspection components. Each chapter is broken into sections that relate to a specific system or component of the home. Most sections will contain some descriptive information done in black font. Observation narrative, done in colored font, will be included if a system or component is found to be significantly deficient in some way. If a system or component of the home was deemed to be in satisfactory or serviceable condition, there will often be no narrative observation comments in that section.

**Observation Labels:** All narrative observations are colored, numbered and labeled to help you find, refer back to, and understand the severity of the observation. Observation colors and labels used in this report are:

- 1. Major Concern:** Repair items that may cost significant money to correct now or in the near future, or items that require immediate attention to prevent additional damage or eliminate safety hazards.
- 2. Repair:** Repair and maintenance items noted during inspection. Please note that some repair items can be expensive to correct such as re-finishing hardwood floors, but are considered simply repair items due to their cosmetic nature.
- 3. Improve:** Observations that are not necessarily defects, but which could be improved for safety, efficiency, or reliability reasons.
- 4. Monitor:** Items that should be watched to see if correction may be needed in the future.
- 5. Due Diligence:** Observation such as a buried oil tank that may require further investigation to determine the severity and / or urgency of repair.
- 6. Future Project:** A repair that may be deferred for some time but should be on the radar for repair or replacement in the near future.
- 7. Efficiency:** Denotes observations that are needed to make the home more energy efficient as well as to bring the home up to modern insulation standards. This category typically includes windows and insulation. Other items, such as lighting and appliances, are not inspected for their energy status.
- 8. Notes and Limitations:** Refers to aside information and /or any comments elaborating on descriptions of systems in the home or limitations to the home inspection.
- 9. WDO:** Denotes the presence of wood destroying organisms or conditions conducive to wood destroying organisms. Conducive conditions include but are not limited to, inadequate clearances, earth/wood contact, cellulose debris, inadequate ventilation, and excessive moisture.

**Wood Destroying Organisms:** This report includes a structural pest inspection embedded within the report. All observations in this report that begin with WDO are a part of a Pest Inspection. Please note that most WDO observations are related to high moisture conditions that could be conducive to mold-like substances. Inspector is not a mold specialist and recommends consulting with an industrial hygienist or other mold remediation expert if concerned about mold or indoor air quality.

**Further Evaluation:** Whenever further evaluation of a system or component is recommended or whenever due diligence is recommended, this further evaluation or investigation should be done by at least one licensed professional and qualified contractor prior to closing as there is a chance of hidden costs or problems associated with the system or component in question.

**Summary Page:** The Summary Page is designed as a bulleted overview of all the observations noted during inspection. This helpful overview is not a substitution for reading the entire inspection report. The entire report must be read to get a complete understanding of this inspection report as the Summary Page does not include photographs or photo captions.

**Moisture Meter Testing:** Where moisture meter testing is indicated in this report a GE Protimeter BLD5360 Surveymaster Dual-Function Moisture Meter was used.

## Summary Page

### Major Concerns

- **Crawl Space:** Moderate rodent damage was noted in the crawl space. Hire a rodent control specialist to do a rodent report and implement a plan to eliminate all rodent entry points, set and monitor traps and remediate all contamination - this will include removing and reinstalling the vapor barrier, and checking all insulation for rodent damage and removing all affected insulation.
- **Electrical:** The majority of the branch wiring (if not the entirety of it) appears to have been updated from the original wiring. There are such extensive repairs needed to the branch and finish electrical wiring work in the home that a comprehensive inspection of this system was impossible today - the electrical work appears to have begun at some point but then been abandoned.

I noted that about half the breakers in the main panel are shut off, and I found many receptacles and switches to be inoperable. Of the finish wiring work that is visible, the majority of the junction boxes are uncovered and many have wires hanging out of them - including above the kitchen countertops and in concealed spaces such as the side attic and crawl space - making this a clear safety hazard. Receptacles and switches are missing cover plates, and many are loose. The current condition of the wiring in the home is unsafe and very disorganized - it will take a licensed electrician extensive further evaluation to determine what specific repairs are needed and what portions of the branch and finish wiring can be used. Please note that access to many rooms in the home, the garage, attics, and the crawl space was limited by construction debris and personal items blocking the way.

- **Heating:** The heating system for the home appears to be done with an electric forced air furnace and ductwork. The furnace is located in the crawl space and was not accessible to be inspected due to the debris and unsafe electrical wiring hanging down from the ceiling and resting on the vapor barrier in the crawl space. The circuit breakers for the electric furnace are shut off in the main panel, and the furnace could not be tested today.

The ductwork is full of drywall dust and construction debris at the heating registers. In the crawl space I could see that a large percentage of the heating ductwork is crushed, disconnected, or otherwise damaged to the point that it may be unusable. Hire a licensed HVAC contractor to further evaluate and repair or replace the heating system and ductwork as necessary for reliable and adequate heating.

- **Interior/Fireplaces:** Visual inspection of the interior was severely limited due to extensive personal items inside the home. In fact several rooms contained such a high volume of construction material and personal belongings that I could not even enter them. In general the home looks to be more like a construction zone with missing doors, incomplete drywall and floor finishes, tape and plastic over doors and windows, and unfinished plumbing/electrical work. Hire a licensed general contractor to further evaluate this work to determine how to proceed to a completed project.

## Repairs

- **Crawl Space:** I was unable to crawl the entire crawl space due to limited access. There are some areas where significant runs of electrical wiring are hanging down from the floor framing above and draped across the vapor barrier. Portions of the vapor barrier are wet/damp and have electrical wiring resting on it. This makes moving through the crawl space unsafe until the wiring is adequately repaired or the power to the home shut off. This will need to be addressed before a complete inspection of the crawl space is possible.
- **Crawl Space:** The current vapor barrier in the crawl space is inadequate and has been damaged by rodents. Have the vapor barrier replaced, using 6 mil black plastic to cover all exposed earth.
- **Crawl Space:** The sub-floor insulation in the crawl space has been damaged by rodents. Remove all rodent contaminated insulation and re-insulate. This work should be done in conjunction with other rodent remediation measures.
- **Crawl Space:** Moderate dampness was noted in the crawl space - see areas where the insulation has sagged onto the vapor barrier and is wet. Please note that the entire crawl space could not be accessed to fully evaluate moisture conditions. This condition may change seasonally, or with rain intensity. Moisture is bad for crawl spaces and can lead to interior molds, structural settlement and wood destroying organisms. Hire a drainage specialist to further evaluate and correct this condition. Also see the Drainage section of this report for observations regarding exterior drainage repairs that are needed.
- **Electrical:** Smoke detectors should be added within twelve inches of the ceiling in all bedrooms. Modern standards recommend smoke detectors in all bedrooms, in all hallways outside bedrooms and at least one on each floor of the building. A carbon monoxide detector is also needed on each floor by Washington State law.
- **Heating:** The radiant floor heating in the master bathroom is inoperable. Have this repaired or replaced as necessary.
- **Main Floor Bathroom:** The bathrooms in this home are in very marginal condition verging on un-usable. All of the bathrooms in this home are in need of remodeling for safe, sanitary and reliable performance.
- **Kitchen:** The kitchen may be somewhat functional, though it is so full of construction debris that not all the appliances were accessible to test them, and I could not see the condition of the counters and cabinets. For a fully functional kitchen, a remodel is necessary. Hire a licensed general contractor to further evaluate and remodel this kitchen.
- **Interior/Fireplaces:** Soot and ash build-up was noted in the woodstove suggesting that the flue should be cleaned and inspected by a licensed chimney sweep. Regular cleaning of the flue is recommended to ensure safe operating condition.
- **Roof/Attic:** Clean the tree debris from the roof to ensure water sheds properly and that the gutters remain clear.
- **Roof/Attic:** Install the missing downspout at the gutter off the kitchen overhang to adequately control roof runoff.



- **Roof/Attic:** No attic access was found during inspection to the upper attics - only a side attic hatch. This means the attic framing, sheathing, ventilation, insulation, wiring, fan terminations could not be inspected. I recommend installing an access and having the attic re-inspected. Standards recommend an access opening of 30 inches x 22 inches when there is greater than 30 sq/ft of attic space.
- **Exterior/Garage:** Painting, staining, and caulking maintenance is needed the exterior siding and trim to ensure a durable building envelope. Hire a siding specialist to further evaluate and repair the siding. I noted unpainted/unstained siding boards and also gaps around the siding/trim where newer windows have been installed in the kitchen area.
- **Exterior/Garage:** Extensive storage in the garage inhibited the view of most of the space, and I was unable to walk through a majority of the space. A full inspection of the garage was not possible. Removal of storage items and re-inspection is recommended prior to close.
- **Exterior/Garage:** Evidence of rodent entry was noted in the garage. All openings into the garage should be sealed to prevent rodent entry. All feces and contamination should be cleaned and a trapping program implemented to monitor sealing progress. See other sections of the report for more information on rodents.
- **Exterior/Garage:** The use of sheetrock is needed to make a fire wall between the garage and the house. This will improve the safety of the house in the event of an accidental fire in the garage.
- **Master Bathroom:** The faucet to the master bathroom sink is loose and requires repair.
- **Master Bathroom:** The bathtub on the master bathroom is full of personal items and looks to not have the waste plumbing hooked up at all. This bathtub and plumbing could not be tested today.
- **Upper Hallway Bathroom:** The shower in the upper hallway bathroom is missing - there is some roughed in plumbing, but that is all.

### Due Diligence Items

- **Plumbing:** Inquire with the seller regarding the nature of the water supply to the home, whether it is by public water source or private/community well. I did not locate a water meter on the property, and was unable to determine the details of the water supply.
- **Plumbing:** This home's sewage appears to employ a private septic system. Please note that an evaluation of this system is beyond the scope of this inspection. I recommend having this system further evaluated by a septic specialist.

### Notes

- **Structure and Basement:** This report includes a structural pest inspection embedded within the report. All observations in the base of the report that begin with WDO are a part of a Washington State Pest Inspection. Please note that most WDO observations are related to high moisture conditions that could be conducive to mold-like substances, rot, or wood destroying insects.
- **Plumbing:** I could not access some of the stand alone sinks/vanities in the rooms in order to test them.
- **Interior/Fireplaces:** The fireplace in living room is blocked by stored items, and could not be inspected today.
- **Grounds:** The patio is full of construction items and could not be inspected today.

***Please contact me directly with any questions about this report.  
My cell phone number is (206) 992-5015.  
Thank you, Thurston.***

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---

## Structure and Basement

---

### Foundation

**% of Foundation Not Visible:** 90%  
**Evidence of Seismic Protection:** Not visible  
**Building Configuration:** Crawl space  
**Foundation Description:** Poured concrete

---

### Floor, Wall and Ceiling Framing

**Wall Framing:** Not visible  
**Wall Insulation:** Not visible  
**Wall Sheathing:** Not visible  
**Floor Framing:** Partly visible, 2x8  
**Sub-Floor Material:** Partly visible, Plywood  
**Ceiling Framing:** Not visible

---

### Sump Pumps and Drains

**Floor Drain:** None noted  
**Sump Pumps:** None noted

---

### Wood Destroying Organisms

**Visible Evidence of Active Wood Destroying Insects:** None noted  
**Visible Evidence of Inactive Wood Destroying Insects:** None noted  
**Visible Evidence of Active Wood Decay and Fungi:** None noted  
**Visible Evidence of Damage from Wood Destroying Organisms:** None noted  
**Visible Evidence of Conditions Conducive to Wood Destroying Organisms:**  
Present

**1. Note, WDO :->** This report includes a structural pest inspection embedded within the report. All observations in the base of the report that begin with WDO are a part of a Washington State Pest Inspection. Please note that most WDO observations are related to high moisture conditions that could be conducive to mold-like substances, rot, or wood destroying insects.

---

## Crawl Space

---

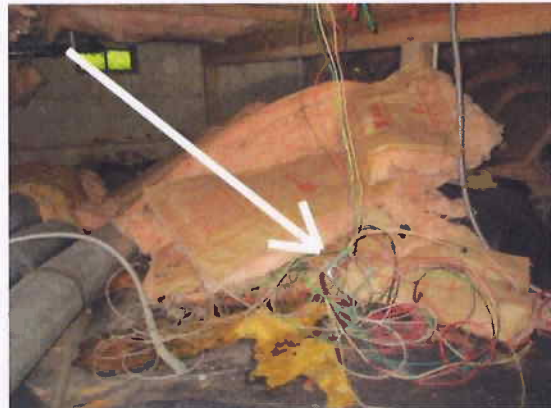
### Crawl Space Access

**Method of Inspection:** Crawled a small section, but access was limited

**2. Repair :->** I was unable to crawl the entire crawl space due to limited access. There are some areas where significant runs of electrical wiring are hanging down from the floor framing above and draped across the vapor barrier. Portions of the vapor barrier are wet/damp and have electrical wiring resting on it. This makes moving through the crawl space unsafe until the wiring is adequately repaired or the power to the home shut off. This will need to be addressed before a complete inspection of the crawl space is possible.



Lots of exposed wiring and loose junction boxes in the crawl space



Large tangles of electrical wiring originating from conduit and junction boxes are resting on wet insulation in the crawl space

---

### Vapor Barrier

**Vapor Barrier Material:** Plastic

**3. Repair :->** The current vapor barrier in the crawl space is inadequate and has been damaged by rodents. Have the vapor barrier replaced, using 6 mil black plastic to cover all exposed earth.



Rodent contaminated vapor barrier

---

## Crawl Space Ventilation

**Ventilation Method:** Exterior wall vents

---

## Posts and Footings

Standard

---

## Insulation

**Insulation Type:** Fiberglass

**Approximate R-Value:** Inconsistent

**4. Repair :->** The sub-floor insulation in the crawl space has been damaged by rodents. Remove all rodent contaminated insulation and re-insulate. This work should be done in conjunction with other rodent remediation measures.



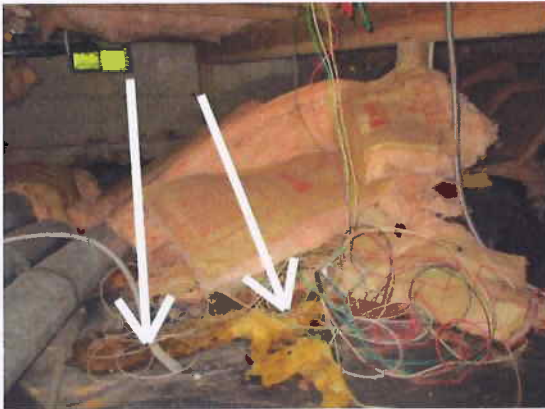
Pulled down insulation

---

## Moisture Conditions

Some signs

**5. Repair, WDO** :-> Moderate dampness was noted in the crawl space - see areas where the insulation has sagged onto the vapor barrier and is wet. Please note that the entire crawl space could not be accessed to fully evaluate moisture conditions. This condition may change seasonally, or with rain intensity. Moisture is bad for crawl spaces and can lead to interior molds, structural settlement and wood destroying organisms. Hire a drainage specialist to further evaluate and correct this condition. Also see the Drainage section of this report for observations regarding exterior drainage repairs that are needed.



Wet insulation on vapor barrier

---

## Rodents

Present

**6. Major Concern** :-> Moderate rodent damage was noted in the crawl space. Hire a rodent control specialist to do a rodent report and implement a plan to eliminate all rodent entry points, set and monitor traps and remediate all contamination - this will include removing and reinstalling the vapor barrier, and checking all insulation for rodent damage and removing all affected insulation.



Rodent feces in crawl space

## Electrical

---

### Service Equipment

Volts: 120/240

**Service Drop:** Underground  
**Meter Base Amperage:** 200  
**Service Entrance (SE) conductor Size:** Aluminum, 4/0, 200 amps  
**Main Panel Amperage:** 200 amps  
**Electric Service Amperage:** 200 amps  
**Main Electric Panel Location:** Utility room near garage



Main panel (left) and sub-panel (right)

---

### Sub-Panel / 2nd Service

Sub-panel

**Sub-panel Main Conductor:** Aluminum, 1/0, 125 amps  
**Sub--Panel Amperage:** 125  
**Sub-Panel Location:** Adjacent to main panel

---

### Branch Wiring

**Wire Material:** Copper  
**Wiring Method:** Rigid, Armored BX cable

**7. Major Concern :->** The majority of the branch wiring (if not the entirety of it) appears to have been updated from the original wiring. There are such extensive repairs needed to the branch and finish electrical wiring work in the home that a comprehensive inspection of this system was impossible today - the electrical work appears to have begun at some point but then been abandoned.

I noted that about half the breakers in the main panel are shut off, and I found many receptacles and switches to be inoperable. Of the finish wiring work that is visible, the majority of the junction boxes are uncovered and many have wires hanging out of them - including above the kitchen countertops and in concealed spaces such as the side attic and crawl space - making this a clear safety hazard. Receptacles and switches are missing cover plates, and many are loose. The current condition of the wiring in the home is unsafe and very disorganized - it will take a licensed electrician extensive further evaluation to determine what specific repairs are needed and what portions of the branch and finish wiring can be used. Please note that access to many rooms in the home, the garage, attics, and the crawl space was limited by construction debris and personal items blocking the way.





Main panel - nearly half of the circuit breakers are shut off



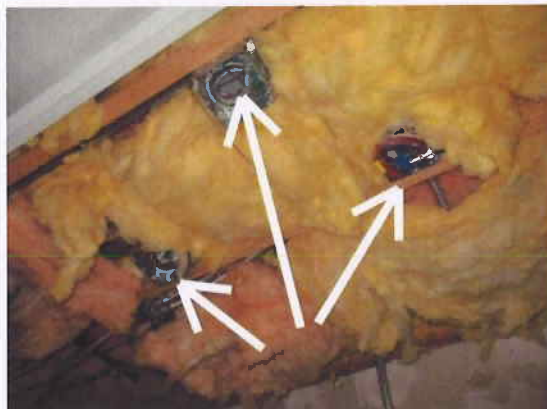
Lots of loose receptacles



Receptacles not live



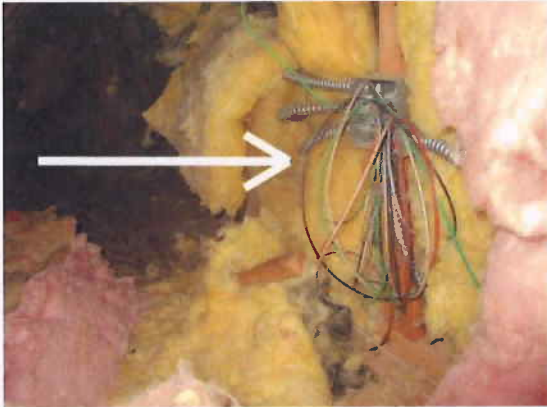
Many uncovered junction boxes throughout the house



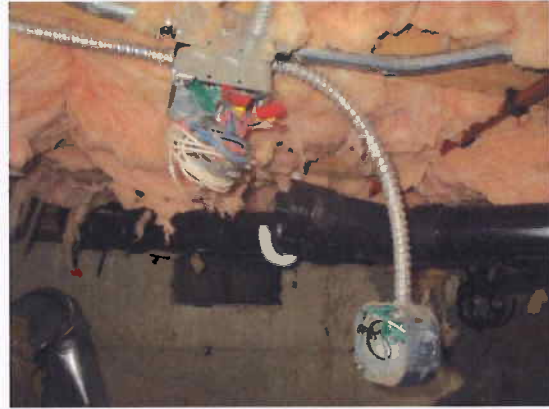
Exposed wiring termination in garage ceiling



Most switches are missing cover plates



Exposed pulled wiring in side attic



Exposed and loose wiring inside the crawl space



Wiring hanging out of junction boxes at the backsplash in the kitchen

---

## Receptacles and Fixtures

**Inspection Method:** Random Testing

**Outlets:** Three wire outlets

---

## Smoke Detectors

Non-standard

**8. Repair** :-> Smoke detectors should be added within twelve inches of the ceiling in all bedrooms. Modern standards recommend smoke detectors in all bedrooms, in all hallways outside bedrooms and at least one on each floor of the building. A carbon monoxide detector is also needed on each floor by Washington State law.

## Heating

### Heating System

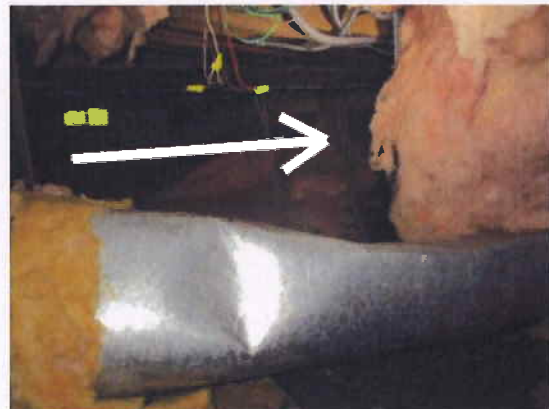
**Energy Source:** Electricity  
**Heating Method:** Forced air furnace  
**Manufacturer:** Unknown - unable to access furnace  
**Capacity:** Unknown  
**Age:** Unknown  
**Last Service Record:** None visible  
**Filtration System:** Unknown

**9. Major Concern** :-> The heating system for the home appears to be done with an electric forced air furnace and ductwork. The furnace is located in the crawl space and was not accessible to be inspected due to the debris and unsafe electrical wiring hanging down from the ceiling and resting on the vapor barrier in the crawl space. The circuit breakers for the electric furnace are shut off in the main panel, and the furnace could not be tested today.

The ductwork is full of drywall dust and construction debris at the heating registers. In the crawl space I could see that a large percentage of the heating ductwork is crushed, disconnected, or otherwise damaged to the point that it may be unusable. Hire a licensed HVAC contractor to further evaluate and repair or replace the heating system and ductwork as necessary for reliable and adequate heating.



Crushed ductwork, disconnected ductwork



Furnace in crawl space could not be accessed due to loose wiring



Heating ductwork just laying on vapor barrier

---

## Heating Distribution System

**Heat Source in Each Room:** Could not test during inspection  
**Distribution Method:** Ductwork

---

## Additional Heat Sources

Present

**Description:** Radiant floor

**10. Repair :**> The radiant floor heating in the master bathroom is inoperable. Have this repaired or replaced as necessary.

---

---

## **Cooling/ Fuel Storage/ Gas Distribution**

---

**Cooling/Heat Pumps**

None Noted

---

**Oil Storage**

None noted

---

**Propane Storage**

None noted

---

**Gas Meter and Gas Plumbing**

None noted

---

## Plumbing

---

### Water Service Supply

**Pipe Material:** Unknown

**Well or Public Supply:** Unknown

**Main Water Shut-off Location:** None found - perhaps in garage

**11. Due Diligence Item** :-> Inquire with the seller regarding the nature of the water supply to the home, whether it is by public water source or private/community well. I did not locate a water meter on the property, and was unable to determine the details of the water supply.

---

### Distribution Pipe

**Circulation Pump:** None noted

**Supply Pipe Materials:** Copper

**Functional Flow:** Average

---

### Waste Pipe and Discharge

**Discharge Type:** Septic system

**Waste and Vent Pipe Materials:** ABS plastic

**12. Due Diligence Item** :-> This home's sewage appears to employ a private septic system. Please note that an evaluation of this system is beyond the scope of this inspection. I recommend having this system further evaluated by a septic specialist.

---

### Hot Water Heater

**System Type:** Tank

**Manufacturer:** GE

**Size:** 50 gal

**Age:** 2011

**Energy Source:** Electricity

---

### Exterior Hose Bibs

Operating

---

### Additional Sinks

Not tested

---

**13. Note** :-> I could not access some of the stand alone sinks/vanities in the rooms in order to test them.



Could not access this sink

---

**Sewage Ejector Pumps**

None noted

---

**Washer**

Tested

---

**Dryer**

Tested

**Power Source:** Electric  
**Duct to Exterior:** Ducted

---

**Additional Plumbing**

None noted

---

---

## Main Floor Bathroom

---

**Sinks and Cabinets**

Tested

---

**Toilet**

Tested

---

**Bathtub / Shower**

Tested

---

**Bathroom Ventilation**

Type: Bath fan

---

**General Bath Condition**

Standard

**14. Repair** :-> The bathrooms in this home are in very marginal condition verging on un-usable. All of the bathrooms in this home are in need of remodeling for safe, sanitary and reliable performance.

---



---

## Upper Hallway Bathroom

---

**Sinks and Cabinets**

Tested

---

**Toilet**

Tested

---

**Bathtub / Shower**

Not Tested

**15. Repair :->** The shower in the upper hallway bathroom is missing - there is some roughed in plumbing, but that is all.



Roughed in plumbing and studs for a shower

---

**Bathroom Ventilation**

Type: Bath fan

---

**General Bath Condition**

Non-standard

---

## Master Bathroom

---

### Sinks and Cabinets

Tested

**16. Repair** :-> The faucet to the master bathroom sink is loose and requires repair.



Loose faucet

---

### Toilet

Tested

---

### Bathtub / Shower

Not Tested

**17. Repair** :-> The bathtub on the master bathroom is full of personal items and looks to not have the waste plumbing hooked up at all. This bathtub and plumbing could not be tested today.



Bathtub is inoperable

**Bathroom Ventilation**

Type: Bath fan

---

**General Bath Condition**

Standard

---

---

## Kitchen

---

### Sinks and Faucets

Tested

---

### Cabinets and Countertops

**Countertop Material:** Granite**Cabinet Material:** Wood

---

### Ventilation Method

Fan ducted to exterior

---

### Appliances

**Refrigerator:** Operating**Dishwasher:** Not operated**Range/ Oven /Cook-tops:** Electric

---

### General Kitchen Condition

Non-standard

**18. Repair :->** The kitchen may be somewhat functional, though it is so full of construction debris that not all the appliances were accessible to test them, and I could not see the condition of the counters and cabinets. For a fully functional kitchen, a remodel is necessary. Hire a licensed general contractor to further evaluate and remodel this kitchen.



Kitchen full of construction debris and other items



## Interior/Fireplaces

---

### Floors

**Floor Materials:** Carpet, Hardwood, Tile  
**Floor Settlement:** None noted

---

### Walls, Ceilings and Closets

**Wall and Ceiling Materials:** Drywall, Wood

**19. Major Concern** :-> Visual inspection of the interior was severely limited due to extensive personal items inside the home. In fact several rooms contained such a high volume of construction material and personal belongings that I could not even enter them. In general the home looks to be more like a construction zone with missing doors, incomplete drywall and floor finishes, tape and plastic over doors and windows, and unfinished plumbing/electrical work. Hire a licensed general contractor to further evaluate this work to determine how to proceed to a completed project.



Construction in progress?



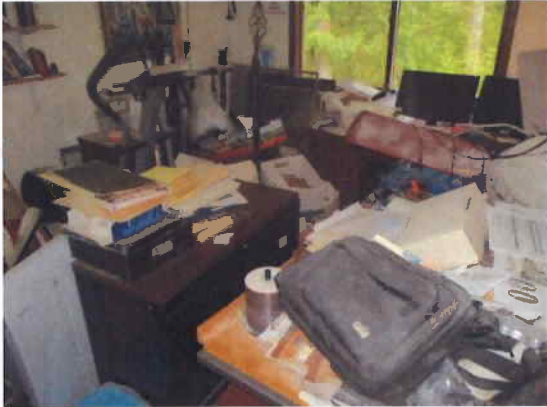
Rooms full of items and totally inaccessible



Front hallway



Upper middle bedroom



Upper bedroom

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**Stairs and Railings**

Standard

---

**Interior Doors**

Solid and Hollow Core

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**Windows****Window Glazing:** Double pane, Single pane**Interior Window Frame:** Wood, Vinyl**Window Styles:** Casement

---

**Solid Fuel Fireplaces**

Present

**Fireplace Types:** Wood stove, Fireplace

**20. Repair :->** Soot and ash build-up was noted in the woodstove suggesting that the flue should be cleaned and inspected by a licensed chimney sweep. Regular cleaning of the flue is recommended to ensure safe operating condition.



Woodstove cleaning recommended

**21. Note** :-> The fireplace in living room is blocked by stored items, and could not be inspected today.



Fireplace

## Roof/Attic

---

### Roof Materials

**Method of Roof Inspection:** Viewed at top of ladder, Viewed with binoculars

**Roof Style:** Hip

**Roof Materials:** Wood shake

**Approximate Age of Roof:** 18-20 years old

**22. Repair :**> Clean the tree debris from the roof to ensure water sheds properly and that the gutters remain clear.



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### Skylights

Insulated curb style

---

### Gutters and Downspouts

Aluminum

**23. Repair :**> Install the missing downspout at the gutter off the kitchen overhang to adequately control roof runoff.





Missing downspout

---

### Attic Access

No access. Vaulted ceiling, No access to portion above back of house, Viewed at access (side attic)

**24. Repair :->** No attic access was found during inspection to the upper attics - only a side attic hatch. This means the attic framing, sheathing, ventilation, insulation, wiring, fan terminations could not be inspected. I recommend installing an access and having the attic re-inspected. Standards recommend an access opening of 30 inches x 22 inches when there is greater than 30 sq/ft of attic space.

---

### Attic Rodent Activity

None noted

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### Roof Framing and Sheathing

**Rafters:** 2x6

**Sheathing:** Skip sheathing

---

### Attic Insulation

**Insulation Type:** Fiberglass

**Approximate Insulation R-Value on Attic Floor:** Inconsistent

---

### Attic and House Ventilation

**Bath Fan Ducting:** Ductwork not visible

**Kitchen Fan Ducting:** Ductwork not visible

**Attic Ventilation Method:** Soffit vents, Ridge vents, No access to inspect ventilation

## Exterior/Garage

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### Siding and Trim

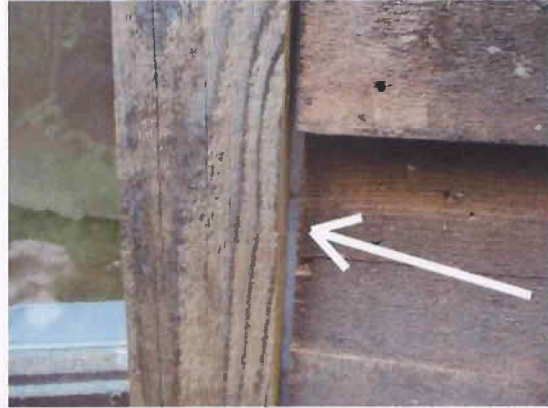
**Trim Material:** Wood

**Siding Material:** Stucco, Beveled cedar, Tongue and groove, Brick

**25. Repair :**> Painting, staining, and caulking maintenance is needed the exterior siding and trim to ensure a durable building envelope. Hire a siding specialist to further evaluate and repair the siding. I noted unpainted/unstained siding boards and also gaps around the siding/trim where newer windows have been installed in the kitchen area.



Unstained planks of beveled cedar



Gaps at siding/trim



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### Eaves

Open rafters

---

### Exterior Doors

French doors, Glass panel doors

---

**Exterior Window Frames**

Wood

---

**Decks**

None noted

---

**Chimneys**

Present

**Chimney Material:** Masonry  
**Chimney Flue Liners:** Not visible

---

**Garage**

Attached

**Automatic Garage Opener:** None noted  
**Garage Door Type:** Wood

**26. Repair :->** Extensive storage in the garage inhibited the view of most of the space, and I was unable to walk through a majority of the space. A full inspection of the garage was not possible. Removal of storage items and re-inspection is recommended prior to close.



Garage could not be accessed

**27. Repair :->** Evidence of rodent entry was noted in the garage. All openings into the garage should be sealed to prevent rodent entry. All feces and contamination should be cleaned and a trapping program implemented to monitor sealing progress. See other sections of the report for more information on rodents.



It looks like rodents are nesting in the garage ceiling insulation

**28. Repair :->** The use of sheetrock is needed to make a fire wall between the garage and the house. This will improve the safety of the house in the event of an accidental fire in the garage.



Garage ceiling has no firewall

## Grounds

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### Drainage and Lot Location

**Clearance to Grade:** Standard  
**Downspout Discharge:** Below grade  
**Lot Description:** Moderate slope

---

### Driveways/Walkways/Flatwork

**Driveway:** Gravel  
**Walkways:** Concrete  
**Patios:** Concrete

**29. Note :->** The patio is full of construction items and could not be inspected today.



Patio full of items

---

### Window and Stairwells

None Noted

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### Grounds, Trees and Vegetation

**Trees/Vegetation too near building:** No

---

### Retaining Walls

None noted

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### Exterior Stairs

None noted

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### Fences

None noted

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**Carport, Outbuildings and Other**

Attached Carport, Storage sheds not  
inspected

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CASE NUMBER: 15-2-08235-3 KNT

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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE, and THOMAS  
and MARIE DICKENS,

Plaintiffs,

v.

KING COUNTY SOLID WASTE DIVISION, a  
municipal corporation,

Defendant.

No. 15-2-08235-3 KNT  
(Consolidated with  
No. 15-2-08485-2 KNT)

PLAINTIFF KAY'S MOTION FOR STATUTORY  
ATTORNEYS' FEES AND COSTS

HONORABLE CATHERINE SHAFFER

I. INTRODUCTION

A property owner in an inverse condemnation case is entitled to reasonable attorney and expert witness fees if compensation, as determined by the jury and reduced to judgment, exceeds the condemnor's highest written offer proffered at least 30 days prior to trial by at least ten percent. RCW 8.25.075(3). King County failed to make such an offer and Sharon Kay is entitled to fees.

Though its planned trial strategy was to argue to the jury that there was, at most, a partial taking of the Kay property, King County chose a different strategy when it proffered its written offer pursuant to RCW 8.25.075. King County voluntarily elected not to extend an offer to compensate Ms. Kay for any partial taking; instead it only tendered an offer

PLAINTIFF KAY'S MOTION FOR STATUTORY ATTORNEYS' FEES AND  
COSTS - 1 of 12  
(15-2-08235-3 KNT)  
(4851-5273-4032)

**APPENDIX E**

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 - FACSIMILE (253) 620-6565

1 based upon a full taking of the Kay property. More specifically, King County offered to  
2 purchase the entire Kay property and receive fee simple title for the property in return, for  
3 \$552,000. But the jury determined that the fair market value of the Kay property is  
4 \$650,000—17.75% more than the compensation King County offered to take title, before  
5 any consideration of prejudgment interest.

6 King County's offer was also untimely. The County failed to make any written offer  
7 30 days prior to the original trial date of June 26, 2017.  
8

9 King County failed to satisfy the requirements of RCW 8.25.075(3) to avoid its  
10 statutory obligation to pay Ms. Kay, as the condemnee, her reasonable attorneys' and  
11 expert fees. Ms. Kay, on the other hand, successfully established that the fair market  
12 value of her property is well in excess of 10% above what the County offered to pay. She  
13 is thus entitled under RCW 8.25.075(3) to reimbursement for the attorneys' fees and  
14 expert witness fees she incurred to present her case.<sup>1</sup>  
15

## 16 II. BACKGROUND

17 The parties engaged in mediation in December 2016. Prior to that, the parties  
18 arranged for each side's appraiser to visit the Kay (and Dickens') properties and prepare  
19 appraisals for each. In October 2016, the County provided Ms. Kay with its appraisal of  
20 the Kay property at \$552,000. Ms. Kay's appraiser estimated the value at that time at  
21 \$570,000.<sup>2</sup> Both during and after the mediation the County never made a written offer.<sup>3</sup>  
22

---

23 <sup>1</sup> Pursuant to CR 54(d)(2), Kay brings this claim for attorneys' fees and costs. In recognition of the Court's  
24 limited time and resources, and to avoid potentially unnecessary time and expense, this motion seeks a  
25 determination of law as to whether fees and costs are recoverable in this action under RCW 8.25.075. If  
26 not, the Court and parties avoid unnecessary efforts challenging specific time entries and expert costs. If,  
however, the Court finds attorneys' fees and costs are recoverable, then Kay will bring a supplemental  
motion for a specific determination of what fees and costs are recoverable.

<sup>2</sup> Declaration of Bradley B. Jones in Support of Kay's Motion for Attorneys' Fees and Costs (Jones Decl) ¶2.



1 Trial in this case was scheduled for June 26, 2017.<sup>4</sup> Thirty days prior to that date,  
2 the County had not made any written offer to purchase all or any portion of Ms. Kay's  
3 property. On June 9, 2017—17 days before trial and almost two weeks after the County's  
4 statutory deadline to make an offer had passed—the Court, to accommodate its own  
5 schedule, reset the trial date to September 18, 2017.<sup>5</sup>

6 On August 15, 2017, the County made its first and only written offer—\$552,000 in  
7 exchange for fee simple title of the entirety of Ms. Kay's property and her dismissal of her  
8 claim for inverse condemnation.<sup>6</sup> Ms. Kay did not accept the offer and the parties  
9 proceeded to trial.  
10

11 As the Court will recall, there was much discussion between counsel and the Court  
12 about the differences between a partial taking or damaging and a total taking or  
13 damaging. In the end, the County and the plaintiffs agreed to place both options before  
14 the jury and agreed to separate jury instructions for each. The key difference between  
15 the two is that under a total taking or damaging the condemning agency pays the  
16 condemnee the fair market value for the property and gets title to the property in return,  
17 whereas under a partial taking or damaging the condemnee can be awarded damages  
18 equal to the diminishment in value of the property without the condemnor receiving any  
19 interest in the property. The latter is what occurred here. The jury awarded damages only  
20 and the County did not receive any interest in the Kay property.  
21  
22  
23

---

24 <sup>3</sup> *Id.*, ¶ 5, Exhibit ("Ex.") C.  
25 <sup>4</sup> *Id.*, ¶ 6, Ex. A.  
26 <sup>5</sup> *Id.*, ¶ 7, Ex. B  
<sup>6</sup> *Id.*, ¶ 8, Ex. C

1 To assess the amount for which the County was liable, the jury was asked to make  
2 specific factual findings of the fair market value of Ms. Kay's property at the time of trial  
3 together with any reduction in value caused by the County's actions. The jury determined  
4 the value of the Kay property was \$650,000, but the "impaired" value was \$585,000.<sup>7</sup>  
5 Thus, the jury awarded Ms. Kay inverse condemnation damages equal to the difference  
6 between the property's fair market value and impaired value, or \$65,000.<sup>8</sup> On December  
7 11, 2017, the Court entered a judgment that reflected the jury's verdict.  
8

### 9 III. ANALYSIS

10 The Washington State Constitution provides that "[n]o private property shall be  
11 taken or damaged for public or private use without just compensation having been first  
12 made." WASH CONST. art. I, § 16. "Originally the determination of 'just compensation'  
13 was limited to an inquiry of the fair market value of the property involved." *State v. Roth*,  
14 78 Wn.2d 711, 712, 479 P.2d 55 (1971). As "[t]he necessary expense of litigation often  
15 forced property owners to accept the condemnor's offer even though they felt it was not  
16 just compensation, the legislature in 1965 enacted several statutory changes to rectify  
17 the situation. *Id.* Two years later, in 1967, the legislature "took further steps to attain a  
18 measure of equality between 'just compensation' and the condemnee's net  
19 compensation" by passing RCW 8.25.070 and RCW 8.25.075. *Id.* at 713.  
20

21 RCW 8.25.075(3) specifically applies to claims for inverse condemnation, *City of*  
22 *Snohomish v. Joslin*, 9 Wn. App. 495, 499, 513 P.2d 293 (1973), and provides:

23 A superior court rendering a judgment for the plaintiff awarding  
24 compensation for the taking or damaging of real property for public use

25 \_\_\_\_\_  
26 <sup>7</sup> *Id.*, ¶ 9, Ex. D

<sup>8</sup> *Id.*

1 without just compensation having first been made to the owner *shall*  
2 award or allow to such plaintiff costs including reasonable attorney fees  
3 and reasonable expert witness fees, but only if the judgment awarded to  
4 the plaintiff as a result of trial exceeds by ten percent or more the highest  
written offer of settlement submitted by the acquiring agency to the  
plaintiff at least thirty days prior to trial.

5 RCW 8.25.075(3) (emphasis added). The statute "clearly manifests a legislative intent  
6 that if a condemnor chooses to take property without instituting condemnation  
7 proceedings, the owner shall be reimbursed for his costs of litigation in obtaining his  
8 constitutionally guaranteed just compensation." *Joslin*, 9 Wn. App. at 499. An award of  
9 reasonable attorney and expert witness fees is not discretionary when an owner's  
10 compensation, as determined by the jury and reduced to judgment, exceeds the  
11 condemnor's highest written offer proffered at least 30 days prior to trial by at least 10%.  
12 *State v. Forrest*, 78 Wn.2d 721, 722, 479 P.2d 45 (1971).

13  
14 **A. The conditions of the statute are met in this case—an award of attorney and expert  
15 witness fees is mandatory.**

16 The jury determined that the fair market value of Ms. Kay's property was  
17 \$650,000. King County only offered \$552,000. Ms. Kay beat the County's offer by  
18 17.75%. In order to sever Ms. Kay's statutorily-mandated attorneys' expert witness fees,  
19 the County needed to offer to purchase the property for at least \$590,910 ( $\$590,910 \times$   
20  $110\% = \$650,001$ ) and it did not do this.

21 **B. The County's offer to purchase Ms. Kay's property can only be compared to the  
22 fair market value of the property.**

23 Ms. Kay anticipates the County will argue that she failed to beat the County's offer  
24 by at least 10% because the County made an offer to purchase the entire property for  
25 \$552,000 and the jury awarded Ms. Kay \$65,000 in inverse condemnation damages.  
26 The Court should reject this argument because it requires the Court to make an apples

1 (total taking with transfer of title) to oranges (partial taking with no property interest  
2 conveyed) comparison. Under the jury's verdict, Ms. Kay received \$65,000 *and kept all*  
3 *of her property worth \$585,000 impaired*. So in the end Kay received the full value found  
4 by the jury, plus interest: a house valued at \$585,000 and \$65,000 in damages,  
5 providing Ms. Kay with a total value of \$650,000 (plus another \$31,221.37 in interest).  
6 Under the County's offer, she would have received only \$552,000 and she would have  
7 lost her property.  
8

9 An apples to apples comparison, in contrast, requires the Court to compare either  
10 the County's offer to purchase the entire property for \$552,000 to the jury's  
11 determination of the fair market value of the property at \$650,000, or to compare the  
12 lack of any offer for a partial damaging against the jury's finding of a partial damaging  
13 and an award of \$65,000. Either of these are consistent with the statute and case law,  
14 which makes clear that a condemnee is entitled to fees if compensation exceeds the  
15 condemnor's highest written offer proffered at least 30 days prior to trial by at least 10%.  
16 *Joslin*, 9 Wn. App. at 499.  
17

18 The County had options regarding settlement offers under RCW 8.25.075 that  
19 would have prevented Ms. Kay from recovering fees and costs, but it did not pursue  
20 them. For example, as discussed above it could have offered Ms. Kay \$590,910 or more  
21 for her property, in which case the fair market value of Ms. Kay's property, as determined  
22 by the jury, would not have been more than 10% of the County's offer. Alternatively, it  
23 could have made a partial taking or damages offer, e.g. \$59,100 ( $\$59,100 \times 110\%$   
24  $= \$65,010$ ), under which Ms. Kay would receive damages for the devaluation of her  
25 property and remain the owner of the devalued property. Had the County made such an  
26

1 offer it could be compared to the devaluation damages the jury awarded Ms. Kay. But  
2 King County did not make such an offer. It only made a total taking offer to buy the entire  
3 property. Thus, its offer can only be compared to the fair market value of the property as  
4 determined by the jury at trial.

5 **C. A comparison of a total taking offer to a partial taking judgment is contrary to the**  
6 **statute's purpose and is unfair.**

7 The purpose of RCW 8.25.075 is to encourage settlement before trial and ensure  
8 that the agency that is involved in taking a property makes a good faith effort to settle.  
9 *City of Seattle v. McCoy*, 112 Wn. App. 26, 32, 48 P.3d 993 (2002). The statute also  
10 allows property owners that are forced to proceed to trial to recover their litigation  
11 expenses if the agency fails to make an adequate offer of compensation. *Id.* Ms. Kay  
12 anticipates that the County will offer an argument that would eviscerate these statutory  
13 protections in any partial takings case.  
14

15 If Washington law accepted King County's anticipated argument - that its  
16 \$552,000 offer to purchase the property should only be compared to the jury's \$65,000  
17 award for devaluation - it would lead to absurd results that are contrary to the statute's  
18 purposes and promote gamesmanship. Here is why: Suppose Sound Transit, or some  
19 other governmental entity, sought to acquire a corner of a larger parcel for a  
20 transportation project. Suppose further that the value of the entire parcel is \$1 million,  
21 but the value of the corner being condemned is only \$100,000. If the County's  
22 anticipated analysis were accepted, the condemnor could make an offer for the entire  
23 parcel for \$250,000, confident both that the owner will not sell the entire parcel for that  
24 amount and that a jury will never value the partial taking of the corner at more than that.  
25  
26

1 Then, regardless of how well the condemnee does at trial in valuing the condemned  
2 corner, he or she will never be able to obtain their fees and costs. Such an interpretation  
3 would incentivize any condemnor in a partial takings situation to "game the system" and  
4 make a low offer for the entire parcel, knowing both that it will not be accepted and that  
5 the condemnee cannot convince the jury to find a value of the partial taking any higher  
6 than the offer to purchase the owner's entire property.<sup>9</sup>  
7

8 Such an interpretation would also place any partial takings condemnees in an  
9 impossible Catch-22 - either accept the ridiculously low offer and sell the entire property  
10 for a fraction of its worth or expend unrecoverable litigation expenses at trial and  
11 consequently not receive full compensation. In this case, under the County's theory it  
12 could have cut off Ms. Kay's attorneys' fees by offering to purchase her property (that the  
13 jury determined to be worth \$650,000) for a ridiculously low amount of around \$59,100.  
14

15 From the perspective of a partial takings condemnee, they become powerless. At  
16 present, the risk of having to reimburse the condemnee its attorneys' fees and costs  
17 incentivizes condemnors to be reasonable and make fair offers. It also represents one of  
18 the few tools available to a condemnee to obtain fair market value in a negotiated  
19 settlement. Taking that tool out of the condemnee's tool box, and eliminating the risk of  
20 attorneys' fees and costs for the condemnor, fundamentally alters the playing field of  
21 eminent domain and inverse condemnation law.  
22

23  
24 \_\_\_\_\_  
25 <sup>9</sup> Washington Courts have long noted the potential for abusive governmental conduct involving  
26 condemnations. These include, for example, "unwarranted delay coupled with a[n] affirmative action by the  
condemning authority resulting in a decrease in property value, actual encouragement of neighborhood  
deterioration by the condemning authority, direct interference by the condemning authority to prevent  
development by the landowner, [and] other abusive conduct." *Lange v. State*, 86 Wn.2d 585, 588, 547  
P.2d 282 (1976).

1           D. *Central Puget Sound* Provides No Comfort to the County.

2           Kay anticipates that the County will rely heavily on *Central Puget Sound Regional*  
3 *Transit Authority v. Airport Investment Co.*, 186 Wn.2d 336, 376 P.3d 372 (2016) to  
4 argue the Court must disregard the disparities between the property the County offered to  
5 acquire (all) and what it received (none) and the value the County placed on the property  
6 (\$552,000) and the value found by the jury (\$650,000). But this Court, who presided  
7 over the underlying trial in *Central Puget Sound*, knows that case involved an entirely  
8 different situation and is thus inapposite.  
9

10           Unlike the present inverse condemnation claim, in *Central Puget Sound*, Sound  
11 Transit initiated condemnation for two separate property interests, a permanent  
12 easement (PE) along the western border of the property and a non-exclusive temporary  
13 construction easement (TCE) of 3,882 square feet for 3 years. Thirty days prior to trial  
14 Sound Transit offered \$463,500 in total for both easements, without any allocation as to  
15 how much was for each. At trial, Sound Transit reduced its temporary easement demand  
16 by approximately 1,000 square feet and also revised the 3-year period to have exclusive  
17 use for 160 nonconsecutive days during the 3 years. However, Sound Transit never  
18 reduced its offer.  
19

20           At the conclusion of trial, the jury awarded only \$225,000 for both easements,  
21 less than half of Sound Transit's offer. The jury valued the PE at \$163,497 and the TCE  
22 at \$61,503. Nonetheless, the condemnee sought attorneys' fees and costs under RCW  
23 8.25.070, "arguing that when Sound Transit changed the size of the TCE and the  
24 durational language of the TCE, it either nullified the 30-day offer or abandoned the  
25 condemnation proceeding altogether." *Id.* at p. 343-44. The trial court denied  
26

1 condemnee's request and the Court of Appeals and the Washington Supreme Court  
2 affirmed. *Id.* at p. 344.

3 *Central Puget Sound* is inapplicable for at least three reasons. First, the  
4 condemnee's entire argument was premised on a theory that Sound Transit had  
5 abandoned its offer when it changed the scope of the TCE. The case did not involve  
6 application of the ten percent rule of RCW 8.25.075(3). Second, it was facially obvious  
7 that Sound Transit's final pre-trial offer was far in excess of the jury's valuation for the  
8 same property, regardless of how one analyzed the differences. For example, in an  
9 earlier offer, Sound Transit had offered \$79,825 for the PE and \$46,600 for the TCE (and  
10 another \$15,875 for improvements). Assuming the same relative ratio of values between  
11 the PE and TCE to Sound Transit's \$463,500 offer 30 days prior to trial would mean a  
12 valuation of the PE of \$259,560 and \$152,028 for the TCE. But the jury's verdict of  
13 valuation for the PE, whose size and scope had never changed, was only \$163,497. And  
14 the jury's valuation of \$61,503 for the TCE was far less than half of the presumed value  
15 Sound Transit had offered, and they were receiving less property than its offer for the TCE  
16 had been based upon. Third, *Central Puget Sound* did not involve an inverse  
17 condemnation with the extent of the taking or damaging to be decided by a jury.  
18  
19

20 **E. King County's only written offer was untimely.**

21 Only sufficient "written" offers in effect 30-days prior to trial may serve to sever a  
22 condemnee's entitlement to attorney and expert witness fees. RCW 8.25.075(3). The  
23 County never made a written offer within 30 days of the originally scheduled trial date of  
24 June 26, 2017. The only written offer the County ever made was its offer to purchase the  
25 entire Kay property for \$552,000. That offer was untimely. Trial in this case was  
26



1 scheduled for June 26, 2017. And thirty days prior to that date, there was no written  
2 offer in effect from King County to purchase Ms. Kay's property. On June 9, 2017, the  
3 Court, to accommodate its own schedule, reset the trial date to September 18, 2017.  
4 This was *after* the 30-day window in RCW 8.25.075(3) had closed. The Court's  
5 rescheduling of the trial date on its own initiative did not magically resuscitate the expired  
6 statutory deadline for making an offer. As such, the County's August 15, 2017 offer was  
7 untimely.  
8

9 **IV. CONCLUSION**

10 King County's only written offer under RCW 8.25.075 was insufficient. The fair  
11 market value of the Kay property, as determined by the jury, was 17.75% greater than the  
12 County's offer. The conditions of RCW 8.25.075(3) are met and Ms. Kay is entitled to an  
13 award for her attorneys' fees and expert witness fees.

14 Dated this 20<sup>th</sup> day of December, 2017.

15 GORDON THOMAS HONEYWELL LLP

16  
17 By 

18 Bradley B. Jones, WSBA No. 17197

[bjones@gth-law.com](mailto:bjones@gth-law.com)

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20  
21 I certify that this memorandum contains 3,096 words,  
22 in compliance with the Local Civil Rules.  
23  
24  
25  
26

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this date I caused to be served in the manner indicated below a copy of the foregoing on the following:

Timothy Repass, WSBA #38373 Wood Smith Henning & Berman LLP 520 Pike Street, Ste. 1524 Seattle, WA 98101-1351 Tel: 206-204-6802 <a href="mailto:trepass@wshblaw.com">trepass@wshblaw.com</a> <a href="mailto:cborgman@wshblaw.com">cborgman@wshblaw.com</a> <a href="mailto:rfaulds@wshblaw.com">rfaulds@wshblaw.com</a>	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Electronic Mail
Stephen J. Tan, WSBA No. 22756 Valerie K. Fairwell, WSBA No. 46812 Cascadia Law Group PLLC 1201 3 <sup>rd</sup> Ave., Ste. 320 Seattle, WA 98101-3075 Tel: (206) 292-6300 <a href="mailto:stan@cascadialaw.com">stan@cascadialaw.com</a> <a href="mailto:vfairwell@cascadialaw.com">vfairwell@cascadialaw.com</a>	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Electronic Mail

DATED this 20<sup>th</sup> day of December, 2017, at Tacoma, Washington.



Gerri Downs, Legal Assistant  
[gdowns@gth-law.com](mailto:gdowns@gth-law.com)  
 Gordon Thomas Honeywell LLP

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE,  
  
Plaintiffs,  
  
v.  
  
KING COUNTY SOLID WASTE DIVISION, a  
municipal corporation,  
  
Defendant.

No. 15-2-08235-3 KNT  
  
DECLARATION OF BRADLEY B. JONES IN  
SUPPORT OF PLAINTIFF KAY'S MOTION FOR  
STATUTORY ATTORNEY FEES AND COSTS

I, Bradley B. Jones, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am a partner at Gordon Thomas Honeywell, LLP and represent Plaintiffs Sharon Kay and Jim Howe in this matter. I make this declaration on personal knowledge and am otherwise competent to testify to the matters contained herein.

2. In preparation for trial in this matter, both Plaintiff Kay and the County retained appraisers to value the Kay property. The County appraiser valued the Kay property as of October of 2016 at \$552,000, whereas Kay's appraiser valued her property at \$570,000.

3. The parties exchanged their respective appraisals in November 2016 in preparation for a December, 2016 mediation before Tom Harris.

DECLARATION OF BRADLEY B. JONES IN SUPPORT OF PLAINTIFF KAY'S  
MOTION FOR STATUTORY ATTORNEY FEES AND COSTS - 1 of 3  
[King County Cause No: 15-2-08235-3]  
[4815-2589-9050]

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 - FACSIMILE (253) 620-6565

1 4. The mediation took place in December 2016 but the parties did not settle.

2 5. Prior to August 15, 2017, the County never made a written settlement offer to  
3 Kay for either a full or partial taking or damaging.

4 6. Trial in this case was scheduled for June 26, 2017. Attached as Exhibit A is a true  
5 and correct copy of the signed Stipulation and Order to Continue Trial Date and Amend Case  
6 Schedule setting the trial for June 26, 2017.

7 7. On June 9, 2017—17 days before trial and almost two weeks after the County's  
8 deadline to make an offer had passed—the Court, to accommodate its own schedule, reset the  
9 trial date to September 18, 2017. Attached as Exhibit B is a true and correct copy of the June  
10 9, 2017 Order Amending Case Schedule.

11 8. On August 15, 2017, the County made its first and only written offer to Kay—  
12 \$552,000 in exchange for fee simple title of the entirety of Ms. Kay's property and her dismissal  
13 of her claim for inverse condemnation. Attached as Exhibit C is a true and correct copy of the  
14 August 15, 2017 letter from Tim Repass.

15 9. The jury determined the value of the Kay property was \$650,000, but the  
16 "impaired" value was \$585,000. Attached as Exhibit D is a true and correct copy of the October  
17 16, 2017 Special Verdict Form.

18 10. On December 11, 2017, the Court entered a judgment that reflected the jury's  
19 verdict. Attached as Exhibit E is a true and correct copy of the Judgment on Verdict.

20 Dated this 20th day of December, 2017, at Tacoma, Pierce County, Washington.

21  
22  
23   
24 Bradley B. Jones, WSBA No. 17197  
25

DECLARATION OF BRADLEY B. JONES IN SUPPORT OF PLAINTIFF KAY'S  
MOTION FOR STATUTORY ATTORNEY FEES AND COSTS - 2 of 3  
[King County Cause No: 15-2-08235-3]  
[4815-2589-9050]

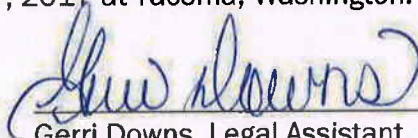
LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 - FACSIMILE (253) 620-6565

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on this date I caused to be served in the manner indicated below a copy of the foregoing on the following:

Timothy Repass, WSBA #38373 Wood Smith Henning & Berman LLP 520 Pike Street, Ste. 1524 Seattle, WA 98101-1351 Tel: 206-204-6802 <a href="mailto:trepass@wshblaw.com">trepass@wshblaw.com</a> <a href="mailto:cborgman@wshblaw.com">cborgman@wshblaw.com</a> <a href="mailto:rfaulds@wshblaw.com">rfaulds@wshblaw.com</a>	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Electronic Mail
Stephen J. Tan, WSBA No. 22756 Valerie K. Fairwell, WSBA No. 46812 Cascadia Law Group PLLC 1201 3 <sup>rd</sup> Ave., Ste. 320 Seattle, WA 98101-3075 Tel: (206) 292-6300 <a href="mailto:stan@cascadialaw.com">stan@cascadialaw.com</a> <a href="mailto:vfairwell@cascadialaw.com">vfairwell@cascadialaw.com</a>	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Electronic Mail

DATED this 20<sup>th</sup> day of December, 2017 at Tacoma, Washington.



Gerri Downs, Legal Assistant  
[gdowns@gth-law.com](mailto:gdowns@gth-law.com)  
Gordon Thomas Honeywell LLP

DECLARATION OF BRADLEY B. JONES IN SUPPORT OF PLAINTIFF KAY'S  
MOTION FOR STATUTORY ATTORNEY FEES AND COSTS - 3 of 3  
[King County Cause No: 15-2-08235-3]  
[4815-2589-9050]

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 - FACSIMILE (253) 620-6565

# EXHIBIT A

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THE HONORABLE SAMUEL CHUNG

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE, and THOMAS  
and MARIE DICKENS,  
  
Plaintiffs,  
  
v.  
  
KING COUNTY, a municipal corporation,  
  
Defendant.

NO. 15-2-08235-3 KNT  
(CONSOLIDATED WITH  
NO. 15-2-08485-2 KNT)

**STIPULATION AND ORDER TO  
CONTINUE TRIAL DATE AND  
AMEND CASE SCHEDULE**

IT IS HEREBY STIPULATED AND AGREED by and between all parties herein that the trial in the above-referenced case, currently scheduled for January 23, 2017, should be continued until June 26, 2017, with a new case schedule issued as to any remaining deadlines. Counsel anticipate that the trial will be approximately two (2) weeks.

The reason for the requested continuance is to provide the parties with sufficient time to conduct and complete discovery and prepare for trial. The parties to this action have been informed and agree to this change.

The parties further stipulate that a new case schedule should be issued with the following deadlines:

DEADLINE for Disclosure of Possible Additional Witnesses	3/6/2017
DEADLINE for Change in Trial Date	3/20/2017
DEADLINE for Jury Demand	3/20/2017

1	DEADLINE for Discovery Cutoff [See KCLCR 37(g)]	5/8/2017
2	DEADLINE for Engaging in Alternative Dispute Resolution	5/30/2017
3	DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16(a)(1)]	6/5/2017
4	DEADLINE for Exchange of Witness & Exhibit Lists & Documentary Exhibits	6/5/2017
5	DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56]	6/12/2017
6	Joint Statement of Evidence [See KCLCR 4(k)]	6/19/2017
7	DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (do not file proposed Findings of Fact and Conclusions of Law with the Clerk)	6/19/2017
8	Trial Date [SEE KCLCR 40]	6/26/2017

12  
13 DATED this 6<sup>th</sup> day of October, 2016.

14 Presented jointly by:

15  
16 GORDON THOMAS HONEYWELL LLP

WOOD SMITH HENNING & BERMAN LLP

17  
18 By: \_\_\_\_\_  
19 Bradley B. Jones, WSBA No. 17197  
20 Reuben Schutz, WSBA No. 44767  
21 [bjones@gth-law.com](mailto:bjones@gth-law.com)  
22 [rschutz@gth-law.com](mailto:rschutz@gth-law.com)  
23 Attorneys for Plaintiffs Sharon Kay and  
24 Jim Howe

By: \_\_\_\_\_  
Timothy Repass, WSBA No. 38373  
[trepass@wshblaw.com](mailto:trepass@wshblaw.com)  
Attorneys for Defendant King County

25 CASCADIA LAW GROUP PLLC

26 By: \_\_\_\_\_  
27 Stephen J. Tan, WSBA No. 22756  
28 Valerie Kay Fairwell, WSBA No. 46812  
[stan@cascadialaw.com](mailto:stan@cascadialaw.com)  
[vfairwell@cascadialaw.com](mailto:vfairwell@cascadialaw.com)  
Attorneys for Plaintiffs Thomas and  
Marie Dickens

STIPULATION AND ORDER TO CONTINUE TRIAL DATE  
PAGE 2

CASCADIA LAW GROUP PLLC  
1201 THIRD AVENUE, SUITE 320  
SEATTLE, WA 98101  
(206) 292-6300



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**ORDER**

THIS MATTER having come before the Court based on the Stipulation set forth above, the Court having reviewed the records and files herein and being fully advised in the premises, it is hereby

ORDERED that trial in this case, currently scheduled for January 2017, shall be continued to June 26, 2017, with a new case schedule issued in the form presented in the Stipulation set forth above.

DATED this 6<sup>th</sup> day of October, 2016.

  
THE HONORABLE SAMUEL S. CHUNG

Presented jointly by:

GORDON THOMAS HONEYWELL LLP

WOOD SMITH HENNING & BERMAN LLP

By: \_\_\_\_\_  
Bradley B. Jones, WSBA No. 17197  
Reuben Schutz, WSBA No. 44767  
[bjones@gth-law.com](mailto:bjones@gth-law.com)  
[rschutz@gth-law.com](mailto:rschutz@gth-law.com)  
Attorneys for Plaintiffs Sharon Kay and Jim Howe

By: \_\_\_\_\_  
Timothy Repass, WSBA No. 38373  
[trepass@wshblaw.com](mailto:trepass@wshblaw.com)  
Attorneys for Defendant King County

CASCADIA LAW GROUP PLLC

By: \_\_\_\_\_  
Stephen J. Tan, WSBA No. 22756  
Valerie Kay Fairwell, WSBA No. 46812  
[stan@cascadialaw.com](mailto:stan@cascadialaw.com)  
[vfairwell@cascadialaw.com](mailto:vfairwell@cascadialaw.com)  
Attorneys for Plaintiffs Thomas and Marie Dickens

# EXHIBIT B

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
KING COUNTY**

DICKENS ET ANO  
Plaintiff/Petitioner

vs

KING COUNTY  
Defendant/Respondent

NO. 15-2-08235-3 SEA

**Order Amending Case Schedule**

Clerk's Action Required

**The trial date is reset, and the Court amends the case schedule as shown below:**

<b>Case Events</b>	<b>Amended Due Date</b>
Change of Trial Date	6/12/2017
Filing Jury Demand	6/12/2017
Discovery Cutoff	7/31/2017
Deadline for Engaging in Alternative Dispute Resolution	8/21/2017
Deadline to file Joint Confirmation of Trial Readiness	8/28/2017
Exchange of Witness & Exhibit Lists & Documentary Exhibits	8/28/2017
Advise Court on Settlement	8/29/2017
Inspect Exhibits	9/5/2017
Deadline for hearing Dispositive Pretrial Motions	9/5/2017
Joint Statement of Evidence	9/11/2017
Trial Brief	9/11/2017
Motions in Limine	9/11/2017
Jury Instructions	9/11/2017
Proposed Findings of Fact & Conclusions of Law	9/11/2017
Use of Discovery/Depositions at Trial	9/11/2017
<b>Trial</b>	<b>9/18/2017</b>

Pursuant to King County Local Rules, IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in the King County Local Rules, may be imposed for failure to comply.

Dated : 6/9/17

  
 Honorable Judge Samuel Chung

# EXHIBIT C



520 Pike Street, Suite 1525  
Seattle, Washington 98101-4001  
tel 206-204-6800 fax 206-299-0400

Direct Dial: (206) 204-6802  
Email: [trepass@wshblaw.com](mailto:trepass@wshblaw.com)  
Website: [www.wshblaw.com](http://www.wshblaw.com)  
Refer to: 05488-0407

August 15, 2017

**VIA E-MAIL**

Bradley Jones  
Gordon Thomas Honeywell, LLP  
1201 Pacific Avenue, Suite 2200  
PO Box 1157  
Tacoma, WA 98401-1157

**ER-408 PROTECTED SETTLEMENT COMMUNICATIONS**

Re: ***Kay/Howe, et al. v. King County***  
Our Client: King County

---

Dear Mr. Jones:

Enclosed please find an offer from my client, King County, to purchase the real property owned by your clients involved in this suit, in exchange for a release and dismissal of your clients' claims for Inverse Condemnation. Please let me know if you have any questions.

Sincerely,

WOOD, SMITH, HENNING & BERMAN LLP

TIMOTHY J. REPASS

TJR:rf

cc: Rueben Schutz  
Client

Encls.  
LEGAL:05488-0407/7744579.1



**King County**

**Solid Waste Division**

Department of Natural Resources and Parks

King Street Center  
201 South Jackson Street, Suite 701  
Seattle, WA 98104-3855

**206-477-4466** Fax 206-296-0197  
TTY Relay: 711

August 10, 2017

Sharon Kay and Jim Howe  
15323 229<sup>th</sup> Ave SE  
Issaquah, WA 98027

Dear Ms. Kay and Mr. Howe:

With this letter, King County makes the following offer to purchase your property:

<b>PURCHASER:</b>	King County, Department of Natural Resources and Parks—Solid Waste Division
<b>SELLER:</b>	Sharon Kay or Sharon Kay and Jim Howe
<b>PROPERTY ADDRESS:</b>	1523 229 <sup>th</sup> Ave SE Issaquah, WA 98027 APN: 222306-9135
<b>PURCHASE PRICE:</b>	\$552,000

Should you accept King County's offer to purchase your property for the price listed above, the parties will then agree on a mutually acceptable purchase and sale agreement and closing.

Very truly yours,

Pat D. McLaughlin  
Director, Solid Waste Division  
King County Department of Natural Resources and Parks

# EXHIBIT D



**FILED**  
KING COUNTY, WASHINGTON

OCT 16 2017

SUPERIOR COURT CLERK  
BY Nicolas Ceja  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SHARON KAY and JIM HOWE, and  
THOMAS and MARIE DICKENS,

Plaintiffs,

v.

KING COUNTY, a municipal corporation,

Defendant.

No. 15-2-08235-3 KNT  
(CONSOLIDATED WITH NO. 15-2-  
08485-2 KNT)

SPECIAL VERDICT FORM

We, the jury, answer the questions submitted by the court as follows:

QUESTION 1:	Was the defendant negligent as to any plaintiff?
-------------	--

(Answer "yes" or "no".)

ANSWER:	Yes	No
Thomas Dickens (write yes or no):	YES	
Marie Dickens (write yes or no):	YES	
Sharon Kay (write yes or no):	YES	
Jim Howe (write yes or no):	YES	

(DIRECTION: If you answered "no" to Question 1 for all plaintiffs, answer Question 3. If you answered "yes" to Question 1 as to any plaintiff, answer Question 2 for that plaintiff or plaintiffs.)

<b>QUESTION 2:</b>	<b>Was such negligence a proximate cause of damage to the plaintiffs?</b>
--------------------	---

(Answer "yes" or "no".)

<b>ANSWER:</b>	<b>Yes</b>	<b>No</b>
Thomas Dickens (write yes or no):	YES	
Marie Dickens (write yes or no):	YES	
Sharon Kay (write yes or no):	YES	
Jim Howe (write yes or no):	YES	

(DIRECTION: Answer Question 3.)

<b>QUESTION 3:</b>	<b>Did the actions of the defendant create a nuisance to any plaintiff?</b>
--------------------	---

(Answer "yes" or "no".)

<b>ANSWER:</b>	<b>Yes</b>	<b>No</b>
Thomas Dickens (write yes or no):	YES	
Marie Dickens (write yes or no):	YES	
Sharon Kay (write yes or no):	YES	
Jim Howe (write yes or no):	YES	

(DIRECTION: If you answered "yes" for any plaintiff in Questions 2 or 3, answer Question 4. If you answered "no" for all plaintiffs in Questions 2 and 3, skip Question 4 and answer Question 5.)

<b>QUESTION 4:</b>	For each plaintiff you answered Questions 1 and 2 "yes", or for each plaintiff you answered Question 3 "yes", what do you find to be the plaintiffs' amount of damages from any of plaintiffs' claims other than those related to inverse condemnation?
Tom Dickens	ANSWER (economic damages): \$ 17,225 ANSWER (non-economic damages): \$ 50,000
Marie Dickens	ANSWER (non-economic damages): \$ 50,000
Sharon Kay	ANSWER (non-economic damages): \$ 50,000
Jim Howe	ANSWER (non-economic damages): \$ 50,000

(DIRECTION: Answer Question 5.)

**QUESTION 5:** Did the defendant's actions create an inverse condemnation total taking of any of plaintiffs' properties?

(Answer "yes" or "no".)

Dickens residential property	ANSWER: (write yes or no)	NO
Dickens vacant land	ANSWER (write yes or no)	NO
Kay residential property	ANSWER (write yes or no)	NO

(DIRECTION: If you answered "yes" to Question 5 for any Dickens property, skip Question 6 and answer Question 7. If you answered "yes" to Question 5 for the Kay Property, skip Questions 6 and 7, and answer Question 8. If you answered "no" to Question 5 for any plaintiff, answer Question 6 for those plaintiffs.)

<b>QUESTION 6:</b>	<b>Did the defendant's actions create an inverse condemnation partial taking of any of plaintiffs' properties?</b>
--------------------	--

(Answer "yes" or "no".)

**Dickens residential property**

ANSWER: (write yes or no) **YES**

**Dickens vacant land**

ANSWER (write yes or no) **YES**

**Kay residential property**

ANSWER (write yes or no) **YES**

(DIRECTION: If you have answered "yes" to Question 6 for any Dickens property, answer Question 7. If you answered "yes" to Question 6 for the Kay property, answer Question 8. If you answered "no" to all properties to Question 6, sign the Verdict Form.)

<b>QUESTION 7:</b>	<b>As to the Dickens plaintiffs only, did the Dickens plaintiffs prove a major or substantial aggravation of the impact of the landfill activities on plaintiff Dickens' property which both detrimentally affected the value of this property and was in violation of an applicable federal, state or local regulation?</b>	
ANSWER (circle yes or no):	Yes	<b>No</b>

(DIRECTION: If you answered "no" to Question 7, do not answer Questions 8, 9 and 10 with regard to the Dickens plaintiffs. If you answered "yes" to Question 7, answer Question 8.)

<b>QUESTION 8:</b>	<b>For each property you answered "yes" on Questions 5 or 6, and/or Question 7, what is the fair market value of that property before the taking?</b>
--------------------	---

Dickens residential property	\$
Dickens vacant land	\$
Kay residential property	\$ 650,000

*(DIRECTION: Answer Question 9.)*

<b>QUESTION 9:</b>	<b>For each property you answered "yes" on Questions 5 or 6, and/or Question 7, what is the diminished fair market value after the taking?</b>
--------------------	--

Dickens residential property	\$
Dickens vacant land	\$
Kay residential property	\$ 585,000

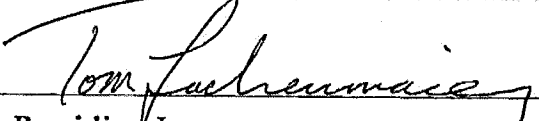
*(DIRECTION: Answer Question 10.)*

<b>QUESTION 10:</b>	<b>As to any taking, what was the date that taking began?</b>
---------------------	---

<b>ANSWER:</b>
----------------

Dickens residential property	Date:
Dickens vacant land	Date:
Kay residential property	Date: DECEMBER 7, 2013

(DIRECTION: Sign the Verdict Form.)

DATE: 10/13/2017	
	Presiding Juror

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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE,

Plaintiffs,

v.

KING COUNTY SOLID WASTE DIVISION, a  
municipal corporation,

Defendant.

NO. 15-2-08235-3 KNT (Consolidated with  
No. 15-2-08485-2 KNT)

~~[PROPOSED]~~ JUDGMENT ON VERDICT

HONORABLE CATHERINE SHAFFER  
Hearing Date: December 11, 2017  
Hearing Time: 4:00 pm

JUDGMENT SUMMARY

This judgment is based on findings by a jury that King County's acts or omissions were negligent, created a nuisance and damaged the value of Sharon Kay's property.

- |    |  |  |
|----|--|--|
| A. | Judgment Creditor  | Sharon Kay and Jim Howe                            |
| B. | Attorney for Judgment Creditor                                 | Bradley B. Jones                                   |
| C. | Judgment Debtor  | King County, a Washington<br>municipal corporation |
| D. | Attorney for Judgment Debtor                                   | Tim Repass   |
| E. | Principal Judgment Amount on Negligence<br>and Nuisance Claims | \$50,000 to Jim Howe<br>\$50,000 to Sharon Kay     |

[PROPOSED] JUDGMENT ON VERDICT  
- 1 of 5  
(15-2-08235-3 KNT)  
(4839-7572-1048)

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 · FACSIMILE (253) 620-6565

- 1 F. Judgment on Inverse Condemnation Claim
- 2 1) Fair Market Value Unimpaired \$650,000
- 3 2) Fair Market Value Impaired \$585,000
- 4 3) Inverse Condemnation Damages \$65,000
- 5 4) Date Inverse Condemnation Commenced December 7, 2013
- 6 5) Interest on Inverse Damages to Date of Judgment \$31,221.37
- 7
- 8 6) Total Inverse Damages \$96,221.37
- 9 G. Attorney's Fees To be determined
- 10 H. Costs To be determined
- 11 I. TOTAL JUDGMENT \$196,221.37
- 12 J. Judgment on the negligence and nuisance claims shall bear interest at the rate of
- 13 3.327% per annum.
- 14 K. Judgement on the inverse condemnation claim shall bear interest at the rate of
- 15 12% per annum.

JUDGMENT AND ORDER

THIS MATTER was tried by a jury beginning September 19, 2017, the Honorable Catherine Shaffer presiding. Plaintiffs Howe and Kay appeared personally and through their attorney Bradley B. Jones of Gordon Thomas Honeywell. Defendant King County appeared personally and through its attorney Tim Repass of Wood Smith Henning & Berman, LLP.

The parties presented evidence and testimony to the jury. On October 16, 2017, after deliberation, the jury returned a verdict in favor of the Plaintiffs, finding Defendant was negligent, had caused a nuisance and had damaged the value of the Kay property. The jury awarded Kay and Howe \$50,000 each on their negligence and nuisance claims.

[PROPOSED] JUDGMENT ON VERDICT  
 - 2 of 5  
 (15-2-08235-3 KNT)  
 (4839-7572-1048)

LAW OFFICES  
 GORDON THOMAS HONEYWELL LLP  
 1201 PACIFIC AVENUE, SUITE 2100  
 TACOMA, WASHINGTON 98402  
 (253) 620-6500 - FACSIMILE (253) 620-6565



1 The jury determined the unimpaired fair market value of the Kay property at the time of  
2 trial without regard to Plaintiffs' claims to be \$650,000 and the unimpaired fair market  
3 value of the Kay property at the time of trial, taking into account Defendant's proven acts  
4 or omissions, to be \$585,000, or a \$65,000 inverse damage amount. The jury also  
5 determined the damaging commenced on December 7, 2013. The \$65,000 of inverse  
6 condemnation damages is subject to twelve percent (12%) statutory simple interest from  
7 the date of the damaging to the date of the Judgment. The Court finds this amount is  
8 \$31,221.37 and when combined with the \$65,000 jury award equals a total amount of  
9 inverse condemnation damages of \$96,221.37. Plaintiff has moved for a judgment on  
10 the verdict.  
11

12 ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that judgment is  
13 entered against King County and in favor of Sharon Kay in the amount of \$146,221.37  
14 and in favor of Jim Howe in the amount of \$50,000 for a total judgment amount of  
15 \$196,221.37. Attorneys' fees and costs will be subject to a later motion.  
16

17 This judgment is entered pursuant to the jury's findings that the Defendant was  
18 negligent, caused a nuisance and damaged the value of the Kay property.

19 DONE IN OPEN COURT this 11 day of December, 2017.

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22 By \_\_\_\_\_

JUDGE CATHERINE SHAFFER

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26 [PROPOSED] JUDGMENT ON VERDICT  
- 3 of 5  
(15-2-08235-3 KNT)  
(4839-7572-1048)

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 - FACSIMILE (253) 620-6565

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Presented by:

GORDON THOMAS HONEYWELL, LLP

By s/Bradley B. Jones  
Bradley B. Jones, WSBA 17197  
Attorneys for Plaintiffs Kay/Howe

Approved as to form:

WOOD SMITH HENNING BERMAN, LLP

By \_\_\_\_\_  
Tim Repass, WSBA 38373  
Attorneys for Defendant

[PROPOSED] JUDGMENT ON VERDICT  
- 4 of 5  
(15-2-08235-3 KNT)  
(4839-7572-1048)

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FILED

18 JAN 02 PM 12:00

THE HONORABLE CATHERINE STAFFER  
KING COUNTY  
SUPERIOR COURT CLERK  
Hearing Date: January 4, 2018 E-FILED  
Hearing Time: 8:30 am  
CASE NUMBER: 15-2-08235-3 KNT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE, and  
THOMAS and MARIE DICKENS,

Plaintiffs,

v.

KING COUNTY, a municipal corporation,

Defendant.

No. 15-2-08235-3 KNT (CONSOLIDATED  
WITH NO. 15-2-08485-2 KNT)

**DEFENDANT'S RESPONSE TO  
PLAINTIFF KAY'S MOTION FOR  
STATUTORY ATTORNEYS FEES AND  
COSTS**

Defendant King County, by and through its counsel of record, respectfully submits this response in opposition to Plaintiff Kay's Motion for Statutory Attorneys Fees and Costs. Plaintiff Kay seeks to obtain upwards of \$600,000 in attorneys' fees and \$180,000 in expert costs, based on a jury award of \$65,000 for a 10 percent damaging of Kay's property<sup>1</sup>, when the County offered to settle Kay's claim for \$552,000 more than 30 days prior to trial. Kay's motion contradicts Washington law, the purpose behind the statute at issue, and the position previously taken by Kay's counsel. Kay's argument ignores the plain statutory language, and boils down to unpersuasive assertions that not awarding attorneys' fees would be "contrary to the statute's purpose" and "unfair".<sup>2</sup> Kay's argument is completely unfounded and disingenuous, ignoring the actual history of

<sup>1</sup> Declaration of Timothy J. Repass ("Repass Decl."), ¶ 2, Ex. A.

<sup>2</sup> Kay's Motion at 7:5-6.

1 settlement negotiations, where the County made both total and partial taking settlement offers far  
2 exceeding the jury's award. Further, Kay cites no authority that RCW 8.25.075 applies to a partial  
3 taking. The Court should deny Plaintiff Kay's request for attorneys' fees and expert costs under  
4 RCW 8.25.075.

5 1. **The County Made a Written Settlement Offer Prior to 30 days before Trial that**  
6 **Far Exceeded the Award to Plaintiff Kay.**

7 Statutory interpretation presents a legal question that begins with the plain language of the  
8 statute. *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). The court's primary goal is to  
9 give effect to the legislature's intent, derived by construing the language as a whole, giving effect to  
10 every provision. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). If the language is  
11 unambiguous, the court gives effect to that language and that language alone as it is presumed the  
12 legislature says what it means and means what it says. *State v. Radan*, 143 Wn.2d 323, 330, 21 P.3d  
13 255 (2001).

14 Plaintiff Kay's claim for fees and costs fails under the plain meaning of RCW 8.25.075. The  
15 plain language of RCW 8.25.075(3) requires that the offer of settlement be submitted to plaintiff "at  
16 least thirty days prior to trial." Neither the plain language of the statute nor Washington case law  
17 support Kay's argument that the operative date is the originally scheduled trial date, as opposed to  
18 the actual trial date. *Petersen v. Port of Seattle*, 94 Wn.2d 479, 488, 618 P.2d 67, 72 (1980) (holding  
19 that "trial date" under RCW 8.25.075(3) is the actual date of trial, not the scheduled trial date). Kay  
20 does not cite any authority for her argument because none exists. Such an interpretation would  
21 require the Court to go against the clear statutory language and case law.

22 King County made several settlement offers to Plaintiffs Kay and Howe prior to 30 days  
23 before trial, in an attempt to compromise and avoid trial. Kay's assertion that no "partial taking or  
24  
25

1 damaging” was made is demonstrably false.<sup>3</sup> The County made several such offers, long before 30  
2 days until trial, that far exceeded the \$59,100 amount Kay asserts was required to cut off attorneys’  
3 fees and expert costs.<sup>4</sup> By December of 2016, the County had offered \$400,000, and then \$450,000,  
4 to settle Kay’s claim for inverse condemnation and attorneys’ fees and expert costs—offers that did  
5 not require transfer of title to the Kay property, and would therefore compensate Ms. Kay for a  
6 partial taking.<sup>5</sup> These offers were made in writing, but communicated through the mediator that the  
7 parties had engaged.<sup>6</sup>

8 Subsequently, based on Kay and Howe’s counsel’s ultimatum that any settlement must  
9 include compensation for a full taking and the County’s purchase of the property, the County made a  
10 settlement offer to Kay more than 30 days prior to trial totaling \$552,000, to purchase the property.  
11 In response to the County’s offer, counsel for Kay and Howe took the position that the offer was the  
12 “benchmark against which any final judgment would be measured.”<sup>7</sup> Plaintiffs’ counsel asserted the  
13 position that, “all [Kay and Howe] need to do is obtain a final judgment of at least \$607,200 to beat  
14 the County’s offer by 10% and be awarded their attorneys’ fees and costs.”<sup>8</sup> That did not happen.  
15 The jury awarded only \$65,000 for a partial damaging of the Kay property, and Kay recovered a  
16 final judgment on the partial taking amount of only \$96,221.37, which included \$31,221.37 in  
17 interest (and only a \$197,221.37 total final judgment).<sup>9</sup> Now, Kay tries to wiggle around the law and  
18 facts to argue that she is entitled to fees and costs. Kay’s argument is completely contrary to her  
19 counsel’s prior position on the issue, and ignores the fact that she made it impossible for the County

20 \_\_\_\_\_  
21 <sup>3</sup> Kay Motion at 6:23-7:3.

22 <sup>4</sup> Repass Decl. ¶ 3, Ex. B.

23 <sup>5</sup> *Id.*

24 <sup>6</sup> *Id.*

25 <sup>7</sup> Repass Decl. ¶ 4, Ex. C (emphasis added).

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> Docket No. 163 (Judgment on Kay/Howe Verdict).

1 to settle for anything less than a total taking. The County made written offers more than 30 days  
2 prior to trial for both a total taking and partial taking, which both far exceeded what Kay recovered  
3 at trial.

4 The Supreme Court of Washington rejected the argument that the 30-day offer made for a  
5 taking of property has to be an offer for the exact interest sought at trial. *Cent. Puget Sound Reg'l*  
6 *Transit Auth. v. Airport Inv. Co.*, 186 Wn. 2d 336, 346-47, 376 P.3d 372, 377 (2016). There, the  
7 court held that an offer of settlement for a interest in land that was different from the actual taking at  
8 trial, was sufficient to constitute an offer to cut off fees and costs. The same basic principle should  
9 be applied here, where the County made an offer to settle exactly what Kay was claiming (a total  
10 taking), but the jury decided there was no total taking. RCW 8.25.075(3) states, in part, that a  
11 condemnee plaintiff can only recover fees and costs “if the judgment awarded...as a result of trial  
12 exceeds by at least ten percent or more the highest written offer of settlement submitted...at least  
13 thirty days prior to trial.” RCW 8.25.075(3) (emphasis added). Here, the judgment did not exceed  
14 the highest written offer made by the County. The fact that the jury determined there was no total  
15 taking should not operate to move the target and allow Kay to recover fees and costs. It would have  
16 been impossible for the County to settle a claim that was not made. The County made good faith  
17 efforts to settle Kay’s claim, and Kay would not entertain any offers for less than a total taking. Kay  
18 opted instead to take the claim to trial and did not succeed.

19 Kay’s attempt to distinguish *Central Puget Sound* is unpersuasive. Contrary to Kay’s  
20 assertion, the *Central Puget Sound* court found that Sound Transit never abandoned its offer (Id. at  
21 347-48 and 350 “Sound Transit’s settlement offer never changed”), and the court did apply the “10  
22 percent” rule (*see id.* at 350). Once the court finds that an offer was made, it necessarily has to find  
23 that the offer exceeds the judgment by ten percent or more. Any differences in the *Central Puget*  
24 *Sound* court’s application of the statute are immaterial. An award of fees and costs under RCW  
25 8.25.075 is not appropriate here, and Kay’s motion should be denied.

1           **2. An award of Attorneys' Fees and Costs would Violate the Purpose of the Statute.**

2           Plaintiff Kay wants the statute at hand to say something it does not say and asserts a purpose  
3 that is misguided. Washington courts have held that the purpose of the attorneys' fee and costs  
4 provision of RCW 8.25.075 is, in part, "[t]o reduce litigation and relieve congestion in the courts"  
5 and to "encourage settlement". *Cascade Sewer Dist. v. King Cty.*, 56 Wn. App. 446, 450, 783 P.2d  
6 1113, 1115 (1989); *see also, Port of Seattle v. Rio*, 16 Wn. App. 718, 720, 559 P.2d 18, 20 (1977).  
7 Kay's approach here completely undermines the purpose of the statute. She should not be allowed to  
8 hold the County hostage by demanding nothing less than compensation for a total taking, then argue  
9 she is entitled to attorneys' fees and costs for a 10 percent damage award. If there is any  
10 "gamesmanship" here,<sup>10</sup> it is by Kay. Kay's assertion otherwise is entirely disingenuous and belies  
11 the facts at hand. The Court may recall that Kay and Howe argued that only the total taking jury  
12 instruction should be provided to the jury. Eventually, the Court decided that both the total and  
13 partial taking instructions should be provided. Kay would not accept a settlement for anything less  
14 than a total taking amount, she argued to the jury for a total taking, and she explicitly took the  
15 position in negotiating with the County that the total taking offer was the "benchmark" the County  
16 had to come within 10 percent of. The County offered Kay far more than the jury awarded her and  
17 Kay did not prevail on her total taking claim at trial. Awarding fees and costs would violate the  
18 purpose of RCW 8.25.075.

19           **3. Adopting Plaintiff Kay's Interpretation of RCW 8.25.075 Would Work Unjust**  
20           **Results on Parties Attempting to Settle Inverse Condemnation Claims.**

21           Plaintiff Kay cites no authority that the condemnor must make a two-pronged offer: one for a  
22 total taking and one for partial taking. Further, Kay cites no authority that a plaintiff who prevails in  
23 a partial taking can extrapolate from the total taking offer to show that plaintiff obtained an award  
24

25           <sup>10</sup> Kay's Motion at 7:18.

1 greater than the 10 percent offer. Plaintiff pursued a total taking claim and lost. The statutory  
2 scheme is designed to promote settlement and to ensure the governmental agency does not  
3 manipulate the process by making unreasonably low offers. The County complied with the statute  
4 and prevailed against Plaintiff's total taking claim. The statute is not designed to award fees and  
5 costs under these circumstances.

6 Additionally, RCW 8.25.075(3) directs, in part, that only the "highest" offer is to be  
7 considered for purposes of an award of attorneys' fees and costs to a condemnee. As such, under  
8 Plaintiff Kay's interpretation of the statute, a party in the position of the County would not be able to  
9 cut off an award of fees and costs. Where an inverse condemnation plaintiff will only accept  
10 settlement for a full taking (and argues for a full taking at trial), a "total taking" offer would  
11 necessarily be higher than any "partial taking" offer made. As the Court can only consider the  
12 "highest" offer under the statute, where both a lower "partial taking" offer and a higher "total taking"  
13 offer are made, and the jury returns a verdict for a partial taking, there is no way for the defendant to  
14 guard against an award of fees and costs. Kay's argument is fundamentally flawed and renders the  
15 statute unfair and unworkable.

16 Likewise, Kay's Sound Transit hypothetical is also misplaced. Washington law "requires a  
17 condemnor to present an adequate taking description to allow the landowner time to prepare for  
18 trial." *Cent. Puget Sound Reg'l Transit Auth.*, 186 Wn. 2d at 347 (citing *In re Municipality of*  
19 *Metropolitan Seattle*, 67 Wn.2d 923, 928, 410 P.2d 790 (1966)). Therefore, the scenario presented  
20 by Kay—where the condemnor "games" the system with a low offer for the entire parcel where there  
21 is only a partial taking—could not occur. Further, as the court in *Central Puget Sound* pointed out,  
22 "[i]t is difficult to imagine that condemnors will generally be motivated to make artificially high  
23 settlement offers" to game the system. *Cent. Puget Sound Reg'l Transit Auth. v. Airport Inv. Co.*,  
24 186 Wn. 2d at 348.

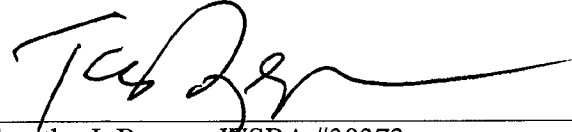
25 The statute is clear and does not allow an award of attorneys' fees and costs under the



1 circumstances presented here. The County respectfully requests that the Court deny Plaintiff Kay's  
2 motion for fees and costs.

3 DATED: January 2, 2018

WOOD, SMITH, HENNING & BERMAN LLP

4  
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6 Timothy J. Repass, WSBA #38373  
7 Philip B. Grennan, WSBA #8127  
8 Attorneys for Defendant

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*I certify that this memorandum contains 1971 words pursuant to Court Rule.*

1 CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that the undersigned is a citizen of the United States and a  
3 resident of the State of Washington, living in said state, over the age of eighteen (18) years, not a  
4 party to, and competent to be a witness in this action; that on this date the undersigned caused to be  
5 served on counsel of record as shown below, in the manner indicated, a true and correct copy of the  
6 foregoing document.

7 ATTORNEYS FOR PLAINTIFF

8 Stephen J. Tan  
9 Valerie K. Rickman  
10 CASCADIA LAW GROUP PLLC  
11 1201 Third Avenue, Suite 320  
12 Seattle, WA 98101  
13 Email: [vrickman@cascadialaw.com](mailto:vrickman@cascadialaw.com)

14 (X) Via E-Service

7 ATTORNEYS FOR PLAINTIFF

8 Bradley B. Jones  
9 Rueben Schutz  
10 GORDON, THOMAS, HONEYWELL LLP  
11 1201 Pacific Avenue, Suite 2200  
12 P.O. Box 1157  
13 Tacoma, W 98401-1157  
14 Email: [bjones@gth-law.com](mailto:bjones@gth-law.com)  
15 [rschutz@gth-law.com](mailto:rschutz@gth-law.com)

16 (X) Via E-Service

17 DATED this 2<sup>nd</sup> day of January, 2018.

18 

19 Renee Faulds, Legal Assistant  
20 [rfaulds@wshblaw.com](mailto:rfaulds@wshblaw.com)

21 LEGAL:05488-0407/8340951.1

FILED

18 JAN 02 PM 12:00

THE HONORABLE CATHERINE SHAEFFER  
KING COUNTY  
Hearing Date: January 4, 2018  
Hearing Time: 8:30 am  
SUPERIOR COURT CLERK  
E-FILED

CASE NUMBER: 15-2-08235-3 KNT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE, and  
THOMAS and MARIE DICKENS,

Plaintiffs,

v.

KING COUNTY, a municipal corporation,

Defendant.

No. 15-2-08235-3 KNT (CONSOLIDATED  
WITH NO. 15-2-08485-2 KNT)

DECLARATION OF TIMOTHY J. REPASS  
IN SUPPORT OF DEFENDANT KING  
COUNTY'S RESPONSE TO KAY'S  
MOTION FOR STATUTORY ATTORNEYS  
FEES

TIMOTHY J. REPASS certifies and declares under penalty of perjury as follows:

1. I am one of the attorneys for Defendant King County in this action and am over the age of 18 years old and competent to testify. I offer this declaration based on my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of an email from Bradley Jones to me dated November 28, 2017.

3. Attached hereto as Exhibit B is a true and correct copy of an email dated December 10, 2016, from my firm to the mediator engaged in this matter, related to settlement negotiations with Plaintiffs Kay and Howe. The County presented written settlement offers of up to \$450,000 to Kay and Howe, through the mediator, as the parties had agreed to negotiate using a mediator and not directly. These offers did not require Kay to give the County title to the property, and therefore were "partial taking" offers.

DECLARATION OF TIMOTHY J. REPASS  
IN SUPPORT OF KING COUNTY'S RESPONSE TO  
KAY'S MOTION FOR STATUTORY ATTORNEYS  
FEES - 1

WOOD, SMITH, HENNING & BERMAN LLP  
520 Pike Street, Suite 1525  
Seattle, Washington 98101-4001  
206-204-6800



1 CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that the undersigned is a citizen of the United States and  
3 a resident of the State of Washington, living in said state, over the age of eighteen (18) years, not  
4 a party to, and competent to be a witness in this action; that on this date the undersigned caused  
5 to be served on counsel of record as shown below, in the manner indicated, a true and correct  
6 copy of the foregoing document.

7 ATTORNEYS FOR PLAINTIFF

8 Stephen J. Tan  
9 Valerie K. Rickman  
10 CASCADIA LAW GROUP PLLC  
11 1201 Third Avenue, Suite 320  
12 Seattle, WA 98101  
13 Email: [stan@cascadialaw.com](mailto:stan@cascadialaw.com)  
14 [vrickman@cascadialaw.com](mailto:vrickman@cascadialaw.com)

15 (X) Via E-Service

7 ATTORNEYS FOR PLAINTIFF

8 Bradley B. Jones  
9 Rueben Schutz  
10 GORDON, THOMAS, HONEYWELL LLP  
11 1201 Pacific Avenue, Suite 2200  
12 P.O. Box 1157  
13 Tacoma, W 98401-1157  
14 Email: [bjones@gth-law.com](mailto:bjones@gth-law.com)  
15 [rschutz@gth-law.com](mailto:rschutz@gth-law.com)

16 (X) Via E-Service

17 DATED this 2<sup>nd</sup> day of January, 2018.

18 

19 Renee Faulds, Legal Assistant  
20 [rfaulds@wshblaw.com](mailto:rfaulds@wshblaw.com)

21 LEGAL:05488-0407/8371701.1

22  
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DECLARATION OF TIMOTHY J. REPASS  
IN SUPPORT OF KING COUNTY'S RESPONSE TO  
KAY'S MOTION FOR STATUTORY ATTORNEYS  
FEES - 3

WOOD, SMITH, HENNING & BERMAN LLP  
520 Pike Street, Suite 1525  
Seattle, Washington 98101-4001  
206-204-6800

**EXHIBIT A**

## Timothy J. Repass

---

**From:** Jones, Brad <BJones@gth-law.com>  
**Sent:** Tuesday, November 28, 2017 4:11 PM  
**To:** Timothy J. Repass  
**Cc:** Schutz, Reuben  
**Subject:** RE: Kay/Howe

Tim: We think an argument can be made that the County's offer was for a full taking or damaging and the jury found only a partial damaging and the County never made an offer for a partial damaging. So it's an apples and oranges comparison. But I must admit, this was not my idea. However, given the amount of fees (approx. \$600k) and costs (approx. \$180k), it's worth the time to write up in a motion and see what happens. I'm thinking of bringing a simple motion on the question of whether any fees or costs are allowed (apart from the statutory ones) and then only move for actual fees and costs dollars assuming the court rules in our favor. It seems like a waste of time to put in and argue all the specific fee issues (e.g. segregation, reasonableness, etc ) if the court decides we have no right to any fees. Does that approach sound reasonable to you?

BTW, I'll delay filing the motion till tomorrow in the hope that you and your client will stipulate.

Regards,

**From:** Timothy J. Repass [<mailto:TRepass@wshblaw.com>]  
**Sent:** Tuesday, November 28, 2017 12:59 PM  
**To:** Jones, Brad  
**Cc:** Schutz, Reuben  
**Subject:** RE: Kay/Howe

Brad, I'm not sure I can advise my client to stipulate to this judgment until I understand the basis for attorneys' fees, beyond the statutory fees set out in my proposed form. Can you provide your basis?

Tim

**From:** Jones, Brad [<mailto:BJones@gth-law.com>]  
**Sent:** Tuesday, November 28, 2017 12:31 PM  
**To:** Timothy J. Repass  
**Cc:** Schutz, Reuben  
**Subject:** FW: Kay/Howe

Tim: Attached is my proposed motion for entry of judgment. I'm hoping we can do this by stipulation. Either way, I'd like to file today and get it on next week's calendar. Let me know if you have any questions or suggested edits.

Regards,

**EXHIBIT B**



## Timothy J. Repass

---

**From:** WAMS <WAMS@usamwa.com>  
**Sent:** Saturday, December 10, 2016 12:09 PM  
**To:** David F. Wood  
**Cc:** Timothy J. Repass; Jablonski, David; David Eldred; thomasvharris@gmail.com; Wams  
**Subject:** Re: Cedar Hills Pipeline - Response to Kay/Howe Demand - Att: Tom Harris

Thanks, I've copied Mr. Harris on this message.

Melody Brenden  
WAMS  
206-467-0793

On Dec 10, 2016, at 11:15 AM, David F. Wood <[dwood@wshblaw.com](mailto:dwood@wshblaw.com)> wrote:

Hi Tom –

We are prepared to respond to the most recent demand by Kay/Howe by increasing our offer to them from 400k to \$450k. We do not wish to respond to the most recent demand from the Dickens. They need to come down much lower in order to motivate us to counter.

Please call me when you get a chance so we can discuss what you might want to say to each counsel for Plaintiffs at this stage.

Thanks. David

### **David F. Wood**

Senior Partner | Wood, Smith, Henning & Berman LLP  
10960 Wilshire Boulevard, 18th Floor | Los Angeles 90024  
[dwood@wshblaw.com](mailto:dwood@wshblaw.com) | TEL 310.481.7601 | CELL 310.963.4601

### **WSHB**

CALIFORNIA • NEVADA • ARIZONA • COLORADO • WASHINGTON • OREGON • NEW YORK • NEW JERSEY • PENNSYLVANIA • FLORIDA

## EXHIBIT C



520 Pike Street, Suite 1525  
Seattle, Washington 98101-4001  
tel 206-204-6800 fax 206-299-0400

Direct Dial: (206) 204-6802  
Email: [trepass@wshblaw.com](mailto:trepass@wshblaw.com)  
Website: [www.wshblaw.com](http://www.wshblaw.com)  
Refer to: 05488-0407

August 15, 2017

**VIA E-MAIL**

Bradley Jones  
Gordon Thomas Honeywell, LLP  
1201 Pacific Avenue, Suite 2200  
PO Box 1157  
Tacoma, WA 98401-1157

**ER-408 PROTECTED SETTLEMENT COMMUNICATIONS**

Re: ***Kay/Howe, et al. v. King County***  
Our Client: King County

---

Dear Mr. Jones:

Enclosed please find an offer from my client, King County, to purchase the real property owned by your clients involved in this suit, in exchange for a release and dismissal of your clients' claims for Inverse Condemnation. Please let me know if you have any questions.

Sincerely,

WOOD, SMITH, HENNING & BERMAN LLP

TIMOTHY J. REPASS

TJR:rf

cc: Rueben Schutz  
Client

Encls.  
LEGAL:05488-0407/7744579.1



**King County**

**Solid Waste Division**

Department of Natural Resources and Parks

King Street Center

201 South Jackson Street, Suite 701

Seattle, WA 98104-3855

206-477-4466 Fax 206-296-0197

TTY Relay: 711

August 10, 2017

Sharon Kay and Jim Howe  
15323 229<sup>th</sup> Ave SE  
Issaquah, WA 98027

Dear Ms. Kay and Mr. Howe:

With this letter, King County makes the following offer to purchase your property:

<b>PURCHASER:</b>	King County, Department of Natural Resources and Parks—Solid Waste Division
<b>SELLER:</b>	Sharon Kay or Sharon Kay and Jim Howe
<b>PROPERTY ADDRESS:</b>	1523 229 <sup>th</sup> Ave SE Issaquah, WA 98027 APN: 222306-9135
<b>PURCHASE PRICE:</b>	\$552,000

Should you accept King County's offer to purchase your property for the price listed above, the parties will then agree on a mutually acceptable purchase and sale agreement and closing.

Very truly yours,

Pat D. McLaughlin

Director, Solid Waste Division

King County Department of Natural Resources and Parks

**EXHIBIT D**



Bradley B. Jones  
Direct: (253) 620-6485  
E-mail: bjones@gth-law.com

August 22, 2017

SETTLEMENT COMMUNICATION

Via email and regular mail

Timothy J. Repass  
Wood, Smith, Henning & Berman LLP  
520 Pike St., Ste. 1525  
Seattle, WA 98101-1351

RE: Kay-Howe v. King County

Dear Tim:

As a follow up to my email of today, I am writing to formally reject the County's settlement offer. The County's offer is inadequate for a variety of reasons. The net effect is that we are confident that we can beat the County's offer by more than ten percent at trial which will entitle my clients to an award of their attorneys' fees and costs.

As mentioned in my email, the appraisal upon which the County based its offer is nearly a year old. The King County residential real estate market is among the hottest in the country, and prices have increased in double digits during the last year. Second, my clients have expended hundreds of hours since the County's appraisal toward completing their remodel. Third, the County has just agreed to buy a property two parcels away from my client for approximately \$675,000, a fact that will be very relevant to the jury.

Separate and apart from the defects in the County's offer arising from an old appraisal and the subsequent change in circumstances, the County's offer also fails to reflect the law. Under RCW 8.25.070, a party whose property has been condemned, either by eminent domain or inverse condemnation, is entitled to an award of its attorney's fees and costs "if the judgment awarded as a result of the trial exceeds by ten percent or more the highest written offer in settlement submitted to those condemnees appearing in the action by condemnor in effect 30 days before the trial." Under RCW 8.28.040, any determination of

Reply to:

Tacoma Office  
1201 Pacific Ave., Suite 2100 (253) 620-6500  
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office  
600 University, Suite 2100 (206) 676-7500  
Seattle, WA 98101 (206) 676-7575 (fax)

Gordon Thomas Honeywell, LLP  
August 22, 2017  
Page 2

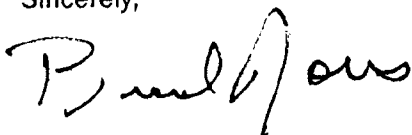
value by the jury must also carry a 12% simple interest rate from the time of the taking - which in this case is December 7, 2013. Thus, Jim Howe and Sharon Kay will be entitled to almost four years of simple interest at 12% on whatever amount the jury awards. Even were the jury to accept the County's year-old appraisal, the amount of interest that will be added to form the judgment would approach \$250,000. In addition, my clients will be entitled to statutory costs. As stated in *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640 (1997):

[I]n an inverse condemnation [] action [], property is taken before just compensation is paid. In those cases, we have held that interest is necessary to compensate the property owner for the loss of the use of the monetary value of the taking or damage from the time of the taking until just compensation is paid. . . . Interest in this context is not an award of prejudgment interest on a liquidated sum in the traditional sense, but is a measure of the rate of return on the property owner's money had there been no delay in payment. . . . The interest awarded is part of the damages and is required as part of just compensation.

*Id.* at 656-57. See also, *State v. Costich*, 152 Wn.2d 463 (2004) ("If a condemnee is entitled as a matter of law to the addition of statutory costs, prejudgment interest, and any other sum, it rationally follows those amounts will always be part of the 'judgment awarded as a result of the trial'. RCW 8.25.070(1)(b).") Thus, even if the County wanted to make a statutorily compliant settlement offer based on its appraisal from last year, the County would need to offer at least \$800,000.

My clients remain interested in resolving this matter short of trial. We have noted with interest the County's pending acquisition of a neighboring property, with which the jury will undoubtedly be fascinated. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,



Bradley B. Jones

BBJ:gd

Cc: Jim Howe and Sharon Kay

[4822-8021-0253]

**EXHIBIT E**



Bradley B. Jones  
Direct: (253) 620-6485  
E-mail: [bjones@gth-law.com](mailto:bjones@gth-law.com)

August 24, 2017

SETTLEMENT COMMUNICATION

Via email and regular mail

Timothy J. Repass  
Wood, Smith, Henning & Berman LLP  
520 Pike St., Ste. 1525  
Seattle, WA 98101-1351

RE: Kay-Howe v. King County

Dear Tim:

As a follow up to my correspondence of Tuesday and our phone call Wednesday, I have worked with my clients to prepare a settlement offer to the County, which you will find below. But first, I think it's important for you and your client to understand our legal position.

As you know, we have common law claims for nuisance, trespass and negligence. Absent an equitable basis, those claims do not provide for attorneys' fees and costs. But those claims do allow for recovery of both "personal" damages (headaches, nausea, sleeplessness, discomfort, annoyance, irritation, inconvenience, etc.) and "property" damages (loss of use and enjoyment, having to flee their home, approximately 20 nights in motels, etc.). Separate and apart from the value of the property, also discussed below, we anticipate asking the jury for somewhere between \$50,000 to \$100,000 per year for Sharon and the same for Jim. From December 7, 2013 to present, that equates to between \$380,000 to over \$750,000.

My clients also have an inverse condemnation claim under Washington's Constitution, Article 1, Section 16. Our constitution requires just compensation in the event of a governmental "taking or damaging" of property. *Martin v. Port of Seattle*, 64 Wn.2d 309, 391 (1964). The diminished value is determined as of the date of trial. *Highline School*

Reply to:

Tacoma Office  
1201 Pacific Ave., Suite 2100 (253) 620-6500  
Tacoma, WA 98402 (253) 620-6565 (fax)

Seattle Office  
600 University, Suite 2100 (206) 676-7500  
Seattle, WA 98101 (206) 676-7575 (fax)

*Dist. V. Port of Seattle*, 87 Wn.2d 6 (1976). In an inverse condemnation action, “property is taken before just compensation is paid. In these cases, . . . interest is necessary to compensate the property owner for the loss of use of the monetary value of the taking or damaging from the time of the taking until just compensation is paid.” *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 656 (1997). See, also, RCW 8.28.040. The award of interest is mandatory. *Sintra*, 131 Wn.2d at 657. My clients and the Dickens contend, and numerous County witnesses have agreed, that the taking commenced on December 7, 2013. And we are confident that we can prove that it has continued ever since. Should the jury agree, and accept even the County’s new offer of \$552,000, the addition of mandatory interest for three years and 10 months would add another approximately \$250,000, for a final inverse condemnation judgment of around \$800,000.

As you know, Washington law also allows a successful inverse condemnation plaintiff to recover its attorneys’ fees and costs in two scenarios—either where the party who is found to have condemned the property never made any offer or where the final judgement amount, including interest, is at least 10% more than any offer made at least 30 days prior to trial. RCW 8.25.075; *State v. Costich*, 152 Wn.2d 463, 474 (2004) (“[A] condemnee is entitled as a matter of law to the addition of statutory costs, prejudgment interest, and any other sum [and] those amounts will always be part of the ‘judgment awarded as a result of trial.’ RCW 8.25.070(1)(b)”) Since the County’s offer of \$552,000 was made over 30 days prior to trial, it will be the benchmark against which any final judgment would be measured. All my clients need to do is obtain a final judgment of at least \$607,200 to beat the County’s offer by 10% and be awarded their attorneys’ fees and costs. Any jury valuation of the property itself of around \$420,000 or more will result in a final judgment over 10% greater than the County’s offer (\$420,000 plus three years and 10 months of 12% simple interest).

We are also confident that the jury will be incensed by the County’s conduct relative to my clients. When the County discovered an encroachment on the 1,000 foot buffer in the northeast corner of the Landfill in the early 1980’s, it acquired the property it had encroached upon. But what will incense the jury even more will be the County’s purchase yesterday of another property bordering the Landfill just two doors down from my client for \$665,000. The property at 15209 229<sup>th</sup> Ave SE was listed for sale on June 23<sup>rd</sup> for \$675,000. It is the exact same lot size as my clients’ property (54,450 sq. ft.), is a smaller home (2440 sq. ft. to my clients’ 2510 sq. ft.), and the County graded the quality of construction and condition of the two homes as identical (8-good). The property also has a much smaller infringement of the 1,000 foot buffer than either the Dickens or my clients. Twelve days later the County voluntarily agreed to pay \$665,000! The King County Assessor’s Office valued that property at only \$468,000 and Zillow valued it at \$688,684. For comparison, the County currently assesses my clients’ property at \$488,000, \$20,000

Gordon Thomas Honeywell LLP  
August 24, 2017  
Page 3

more than the property the County just bought. And Zillow values it at \$662,034. Why, the jury will ask, would the County voluntarily agree to buy a piece of property in a few days at market from a party that had not sued nor demonstrated any intention of suing the County, but forced my clients into over 3 years of litigation without any offer to purchase?


In October of last year the County's appraiser valued my clients' property at \$552,500 and my clients' appraiser valued the property at \$570,000. Nearly a year has passed and King County remains among the hottest real estate markets in the country. In the interim, my client has spent hundreds of hours toward completion of the remodel of what was to be their dream home. And neither of those appraisals have the benefit of the new comparable the County created yesterday. A jury could easily add 12% to 20% to either appraised value to reach the valuation at the time of trial. More likely, the jury will simply adopt the value placed by the County on its purchase yesterday. That would mean anywhere between \$618,800 (12% above the County's appraisal last year), \$665,000 (the County's purchase yesterday) and \$684,000 (20% above my clients' appraisal). In any event, all of these are over 10% above the County's offer without any consideration of interest. Adding 12% interest leaves a final inverse condemnation award of \$900,972 to \$995,904. The point is, besting the County's offer by 10% will not be difficult, particularly with such a low bar (i.e. approximately \$420,000).

The net of all of the above is the County is facing a potential liability at trial of up to \$750,000 in damages for the common law claims, approximately \$1 million in an inverse condemnation award, and attorneys' fees and costs that will be very well north of \$500,000, or a total liability of over \$2,250,000.

In light of the above, my clients have authorized me to make a last ditch effort at settlement. My clients are willing to resolve ALL claims in this case for the following: 1) a purchase of their home for \$675,000; and 2) payment of an additional \$600,000—or a total of \$1,275,000.

We are fast approaching trial. I have a team working on trial preparation as I'm sure you do as well. So we are incurring many thousands of dollars in fees and costs each day forward. As a result, this offer will only remain open until 5 pm Thursday, August 31, 2017. Should you have any questions, please don't hesitate to contact me.

Sincerely,



Bradley B. Jones

[4824-6955-1694]

Gordon Thomas Honeywell LLP  
August 24, 2017  
Page 4

BBJ:gd  
Cc: Jim Howe and Sharon Kay

[4824-6955-1694]

FILED

18 JAN 03 AM 10:47

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 15-2-08235-3 KNT

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE,

Plaintiffs,

v.

KING COUNTY SOLID WASTE DIVISION, a  
municipal corporation,

Defendant.

NO. 15-2-08235-3 KNT (Consolidated with  
No. 15-2-08485-2 KNT)

PLAINTIFF KAY'S REPLY TO MOTION FOR  
STATUTORY ATTORNEYS' FEES AND COSTS

HONORABLE CATHERINE SHAFFER  
Hearing Date: January 4, 2018  
Hearing Time: 8:30 a.m.

A. Introduction

In its response, the County identifies two settlement offers, one for \$450,000 and one for \$552,000. Neither is sufficient to sever Ms. Kay's statutory entitlement to fees. The \$450,000 offer was never submitted in writing to Ms. Kay as required by statute. It was also contingent on Ms. Kay conveying title to her property to the County. The \$552,000 offer, while in writing, was, like the \$450,000 offer, contingent on Ms. Kay conveying title to her property. For purposes of RCW 8.25.075(3), Ms. Kay compared the County's only written offer of \$552,000 to the judgment, under which she received an inverse condemnation damages award of \$96,221.37 and retained title to her property valued by the jury at \$585,000. By any objective measure, the result Ms. Kay achieved

PLAINTIFFS' REPLY TO MOTION FOR ATTORNEYS' FEES - 1 of 6  
(15-2-08235-3 KNT)  
(4838-3190-6906)

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 · FACSIMILE (253) 620-6565

1 exceeded the County's offer by more than 10 percent. Ms. Kay is therefore entitled to  
2 reasonable attorneys and expert witness fees.

3  
4 The County has taken the position that the actual property interest involved in a  
5 condemnation or inverse claim is irrelevant and courts are prohibited from considering  
6 anything other than the dollar amount of the offer in effect 30-days before trial and the  
7 dollar amount of the judgment. But the property interest at issue in a condemnation or  
8 inverse matter cannot be divorced from the comparison of the offer and the judgment.  
9 Likewise, an express condition of settlement cannot be divorced from the settlement  
10 offer. Under the County's offer, Ms. Kay would have had to relinquish her property and all  
11 she would have received was \$552,000. But under the judgment, she kept her property,  
12 valued by the jury at \$585,000, and received almost \$100,000 in inverse damages.  
13 Comparing these positions, and their value to Ms. Kay, is the only apples-to-apples  
14 comparison that can be made for purposes of RCW 8.25.075(3).

15 **B. The \$450,000 offer was never put in writing to Ms. Kay and was contingent on her**  
16 **transferring ownership of the property to the County.**

17 The County claims that it made a written offer to Ms. Kay in the amount of  
18 \$450,000 that did not require Ms. Kay to transfer her title. This is false.

19 The parties mediated the case in December 2016; Tom Harris served as the  
20 mediator.<sup>1</sup> Shortly after the mediation, King County made an offer to settle Ms. Kay's  
21 claims for \$400,000.<sup>2</sup> However, the offer was not made directly to Ms. Kay or in writing.  
22 Rather, the County conveyed this offer to Mr. Harris, who called counsel for Ms. Kay and  
23

24  
25  
26  

---

<sup>1</sup> Supplemental Declaration of Bradley B. Jones ("Supp. Jones Decl."), ¶¶ 3-7.

<sup>2</sup> *Id.*, ¶ 9.

1 relayed the offer verbally.<sup>3</sup> The offer was expressly conditioned on Ms. Kay conveying her  
2 property to the County.<sup>4</sup>

3 On December 15, 2016, counsel for the County called counsel for Ms. Kay and  
4 verbally conveyed that the County had increased its offer to \$450,000.<sup>5</sup> This offer was  
5 expressly conditioned on Ms. Kay conveying title to her property to the County.<sup>6</sup> This offer  
6 was never conveyed by the County to Ms. Kay in writing. The County's offer, and the fact  
7 that it was contingent on Ms. Kay conveying title, is recorded in contemporaneous  
8 emails.<sup>7</sup>

9  
10 RCW 8.25.010 requires that a government's settlement offer must be made "at  
11 least thirty days prior to the date set for trial" and must be served on the condemnee in  
12 writing. RCW 8.25.075(3) reiterates this obligation, requiring "a written offer of  
13 settlement submitted by the acquiring agency to the plaintiff." The County never made its  
14 offer of \$450,000 to Ms. Kay in writing. In addition, the offer required transfer of title to  
15 Ms. Kay's property.<sup>8</sup> Thus, even if it had been provided in writing, the offer was  
16 insufficient to sever Ms. Kay's entitlement to fees under the statute for the same reason  
17 the County's written offer of \$552,000 is insufficient.

18  
19 **B. The County's written offer of \$552,000 was insufficient and Ms. Kay is entitled to  
20 fees.**

21 According to the County, the property interest at issue in any condemnation or  
22 inverse condemnation action, and what happens to it as a result of any judgment, is

23 <sup>3</sup> *Id.*

24 <sup>4</sup> *Id.* See also Declaration of Stephen Tan in Support of Plaintiff Kay's Motion for Statutory Attorneys' Fees  
and Costs, ¶¶ 2-5.

25 <sup>5</sup> Supp. Jones Decl., ¶ 10.

26 <sup>6</sup> *Id.*

<sup>7</sup> Exhibits A and B to Supp. Jones Decl.

<sup>8</sup> To the extent that there is a disagreement regarding the \$450,000 offer and the terms of the offer, the  
disagreement underscores the reason why the statute explicitly requires that such offers be made in  
writing.

1 irrelevant to the analysis of RCW 8.25.075(3). This is incorrect as a matter of law and  
2 absurd as a matter of policy or practice. The County's response completely ignores the  
3 \$650,000 value the jury placed on the Ms. Kay's property; the fact that Ms. Kay now has  
4 a judgment for nearly \$100,000 and still owns her home (de)valued by the jury at  
5 \$585,000; the fact the County's only written offer was contingent on Ms. Kay conveying  
6 title to her property; and the fact that the County received no property interest from the  
7 judgment. All of this is relevant, and consideration of these facts is necessary, for proper  
8 application of RCW 8.25.075(3).  
9

10 The County's reliance on *Central Puget Sound* is unpersuasive. By the County's  
11 reading, "[t]he Supreme Court of Washington rejected the argument that the 30-day  
12 offer...has to be...for the exact interest sought at trial." The County extrapolates its  
13 reading to argue essentially that courts need never concern themselves with whether the  
14 offer made by the condemnor is for the same or even similar property valued by the jury.  
15 The County simply ignores that the jury valued Ms. Kay's property at \$650,000. And the  
16 County ignores the consequence of the judgment—that Ms. Kay gets a judgment of  
17 \$96,221.37 and keeps a property that, even diminished, is still worth \$585,000. By any  
18 objective measure, Ms. Kay is much better off having litigated her inverse condemnation  
19 claim than taking the County's offer of \$552,000.  
20

21 The County also claims that Ms. Kay "made it impossible for the County to settle  
22 for anything less than a total taking." But a party's settlement posture is irrelevant to the  
23 statutory question of whether they beat the offer by 10 percent. And there was certainly  
24 nothing preventing the County from making a partial takings or damaging offer if it was  
25 confident that the jury would not find a total taking. In fact, in any inverse condemnation  
26



1 case in which the defendant denies liability or believes that a jury will not find a total  
2 taking, it would be prudent to make a partial takings offer.

3  
4 As discussed above and in Ms. Kay's opening brief, an offer that requires a  
5 condemnee to transfer title to property can only be compared to a judgment that  
6 accounts for the fair market value of the property, as found by the jury. Only two  
7 scenarios may present themselves when an offer to purchase property in an inverse  
8 condemnation case is made and rejected. Either the condemnor takes the entire property  
9 and obtains title (whereby the offer is compared to the jury's determination of fair market  
10 value) or the condemnor impairs the property and pays damages for devaluation  
11 (whereby the offer is compared to the impaired fair market value of the property plus  
12 devaluation damages). This case involves the latter scenario. The County's offer of  
13 \$552,000 was simply insufficient to sever Ms. Kay's entitlement to fees under RCW  
14 8.25.075(3).

15  
16 C. Conclusion

17 For the reasons discussed above and in Ms. Kay's fee petition, Ms. Kay requests  
18 that the Court grant her fee petition pursuant to RCW 8.25.075(3).

19 Dated this 3<sup>rd</sup> day of January, 2018.

20 GORDON THOMAS HONEYWELL LLP

21 By   
22 \_\_\_\_\_  
23 Bradley B. Jones, WSBA No. 17197  
24 [bjones@gth-law.com](mailto:bjones@gth-law.com)


25 I certify that this memorandum contains 1256 words,  
26 in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this date I caused to be served in the manner indicated below a copy of the foregoing document on the following:

Timothy Repass, WSBA #38373 Wood Smith Henning & Berman LLP 520 Pike Street, Ste. 1524 Seattle, WA 98101-1351 Tel: 206-204-6802 <a href="mailto:trepass@wshblaw.com">trepass@wshblaw.com</a> <a href="mailto:cborgman@wshblaw.com">cborgman@wshblaw.com</a> <a href="mailto:rfaulds@wshblaw.com">rfaulds@wshblaw.com</a>	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Electronic Mail
Stephen J. Tan, WSBA No. 22756 Valerie K. Fairwell, WSBA No. 46812 Cascadia Law Group PLLC 1201 3 <sup>rd</sup> Ave., Ste. 320 Seattle, WA 98101-3075 Tel: (206) 292-6300 <a href="mailto:stan@cascadialaw.com">stan@cascadialaw.com</a> <a href="mailto:vfairwell@cascadialaw.com">vfairwell@cascadialaw.com</a>	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Electronic Mail

DATED this 3<sup>rd</sup> day of January, 2018 at Tacoma, Washington.



Gerri Downs, Legal Assistant  
[gdowns@gth-law.com](mailto:gdowns@gth-law.com)  
Gordon Thomas Honeywell LLP

FILED

18 JAN 03 AM 10:47

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 15-2-08235-3 KN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE,

Plaintiffs,

v.

KING COUNTY SOLID WASTE DIVISION, a  
municipal corporation,

Defendant.

No. 15-2-08235-3 KNT

SUPPLEMENTAL DECLARATION OF BRADLEY  
B. JONES IN SUPPORT OF PLAINTIFF KAY'S  
MOTION FOR STATUTORY ATTORNEY FEES  
AND COSTS

I, Bradley B. Jones, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am a partner at Gordon Thomas Honeywell, LLP and represent Plaintiffs Sharon Kay and Jim Howe in this matter. I make this declaration on personal knowledge and am otherwise competent to testify to the matters contained herein.

2. In its Response to Plaintiff Kay's Motion for Statutory Attorneys' Fees and Costs, the County claims that it: (a) made a \$450,000 partial takings offer; (b) in writing; (c) that did not include purchase of the Kay property. All three of those allegations are false.

SUPP. DECL OF JONES IN SUPPORT OF PLAINTIFF KAY'S MOTION FOR  
STATUTORY ATTORNEY FEES AND COSTS - 1 of 4  
[King County Cause No: 15-2-08235-3]  
[4815-2589-9050]

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 - FACSIMILE (253) 620-6565

1           3.       This case was filed on April 7, 2015. During the summer of 2016, the first  
2 settlement discussions were held between counsel for the County, myself (representing  
3 Plaintiffs Sharon Kay and Jim Howe) and Stephen Tan (representing the Dickens).

4           4.       It was apparent to me that any attempts to negotiate a settlement between  
5 counsel would likely be fruitless and that chances for a settlement would increase dramatically  
6 with the involvement of a seasoned mediator. In ensuing discussions between myself, Stephen  
7 Tan and counsel for the County, we agreed to retain Tom Harris and scheduled a mediation in  
8 early December 2016.

9           5.       As part of the trial preparation, and to facilitate our mediation, the County and the  
10 Plaintiffs arranged for appraisals of the properties at issue. Those appraisals occurred in  
11 October of 2016 and the parties exchanged their appraisals in November in preparation for the  
12 mediation.

13           6.       Kay's appraiser valued her property at \$572,000. The County's appraiser valued  
14 the Kay property at \$552,000 but with a very important caveat. The County's appraiser noted  
15 that a long-term remodel of the Kay residence was not complete. The County's appraiser  
16 estimated it would take approximately \$150,000 to complete the remodel in order to get the  
17 Kay property to its \$552,000 valuation.

18           7.       The parties mediated on December 5, 2016. The mediation was unsuccessful.

19           8.       Subsequent to the mediation, Tom Harris continued his efforts. For the next ten  
20 days or so, Mr. Harris spoke extensively with counsel for all parties. I have reviewed my emails  
21 and during December of 2016 and January of 2017, I did not receive nor did I send an email to  
22 Tom Harris. All of my communications with Mr. Harris were verbal.  
23  
24  
25

1           9.     On December 6, 2016, Mr. Tan and I spoke by phone with Tom Harris and he  
2 verbally conveyed a settlement offer from the County contingent upon Ms. Kay conveying her  
3 property to the County. Without waiving and expressly preserving the attorney-client privilege,  
4 attached hereto as Exhibit A is a true and correct copy of a December 6, 2016 email from me to  
5 my clients describing the County's offer.

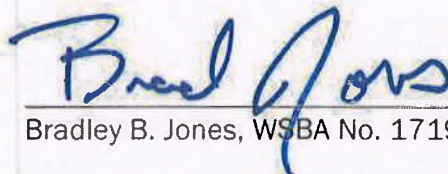
6           10.    On December 15, 2016, I had a phone call with the County's counsel. During that  
7 call, the County's counsel verbally conveyed an offer to me for \$450,000 to buy the Kay  
8 property and settle the case.

9           11.    Without waiving the attorney-client privilege, attached hereto as Exhibit B is a true  
10 and correct copy of a December 15, 2016 email to my clients relaying the County's offer of that  
11 same day. As set forth in the email, the offer included acquisition of the Kay property. Counsel  
12 for the County explained that, given its appraiser's opinion that another \$150,000 was needed  
13 to arrive at a value of \$552,000, the County was having difficulty justifying any offer higher than  
14 \$450,000.

15           12.    I never received an offer from the County for a partial taking, either orally or in  
16 writing.

17           13.    Neither I nor my clients were ever served with any written offer from the County  
18 that complies with RCW 8.25.010 and .075(3) other than the County's August 10, 2017 offer of  
19 \$552,000.  
20

21           Dated this 3<sup>rd</sup> day of January, 2018, at Tacoma, Pierce County, Washington.  
22

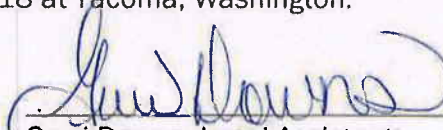
23   
24 \_\_\_\_\_  
25 Bradley B. Jones, WSBA No. 17197

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this date I caused to be served in the manner indicated below a copy of the foregoing on the following:

<p>Timothy Repass, WSBA #38373 Wood Smith Henning &amp; Berman LLP 520 Pike Street, Ste. 1524 Seattle, WA 98101-1351 Tel: 206-204-6802 <a href="mailto:trepass@wshblaw.com">trepass@wshblaw.com</a> <a href="mailto:cborgman@wshblaw.com">cborgman@wshblaw.com</a> <a href="mailto:rfaulds@wshblaw.com">rfaulds@wshblaw.com</a></p>	<p><input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Electronic Mail</p>
<p>Stephen J. Tan, WSBA No. 22756 Valerie K. Fairwell, WSBA No. 46812 Cascadia Law Group PLLC 1201 3<sup>rd</sup> Ave., Ste. 320 Seattle, WA 98101-3075 Tel: (206) 292-6300 <a href="mailto:stan@cascadialaw.com">stan@cascadialaw.com</a> <a href="mailto:vfairwell@cascadialaw.com">vfairwell@cascadialaw.com</a></p>	<p><input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> King County E-Service <input checked="" type="checkbox"/> Electronic Mail</p>

DATED this 3<sup>rd</sup> day of January, 2018 at Tacoma, Washington.



Gerri Downs, Legal Assistant  
[gdowns@gth-law.com](mailto:gdowns@gth-law.com)  
Gordon Thomas Honeywell LLP

# EXHIBIT A

## Jones, Brad

---

**From:** Jones, Brad  
**Sent:** Tuesday, December 06, 2016 9:25 AM  
**To:** jimfhowe@gmail.com; HeresYourWriter@gmail.com  
**Cc:** Schutz, Reuben; Mangat, Annu  
**Subject:** New Settlement Offer

I just got off the phone with Tom Harris and Steve Tan. Tom met with the County and AIG for about 30-40 minutes after we left. Tom said it was good that we walked away. At the end of the meeting the County made new offers. The County offered to settle with the two of you for \$400,000 total and in return the County gets your house. The County offered the Dickens \$500,000 and that the County gets the Dickens' property. Tom knows that's not acceptable and that we would not agree to settle on those terms. But he felt it was a positive direction.

The offer is open until Friday, although Tom knows we will reject it. Steve and I told Tom we'd talk to our respective clients and then talk between ourselves (Steve, Valerie, Reuben and me) and that we'd get back to Tom on Thursday.

As a straw man (or person) proposal to consider, I suggest we reject the County's offer and we counter at \$925,000. That is a \$175,000 reduction from our last demand of \$1.1 million. I think a movement of that amount shows that we recognize that the County has made a considerable move and we are showing flexibility in response.

Is there a time tomorrow when Reuben and I can talk to you by phone?

### Brad Jones

Attorney at Law

Admitted to practice in Washington and Oregon



Tacoma Office  
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# EXHIBIT B

## Jones, Brad

---

**From:** Jones, Brad  
**Sent:** Thursday, December 15, 2016 2:36 PM  
**To:** jimfhowe@gmail.com; HeresYourWriter@gmail.com  
**Cc:** Schutz, Reuben; Mangat, Annu  
**Subject:** Call today from County's lawyer

Long and short of it is he apologized for the mediation and claimed the fault lay with the County decision maker (contrary to what Tom Harris was telling us). He said the County had difficulty getting past the Dickens "outrageous" demand. I told him I had never come away from a mediation being angrier or feeling more disrespected. And I told him you two were twice as mad as me.

He increased the County's offer to \$450k. I told him that was rejected. He said the County is having trouble getting past a value of \$400k for the home given their appraiser's estimate of \$150k cost to complete the remodel. I explained: 1) that was a ridiculous estimate; and 2) much work had been done since he was there. He seems to feel that the way to move the ball forward with the County is to convince the County's appraiser that you are close to being done. Would you be willing to have the County's appraiser come by and take a look at the work you've done since early October? If we can convince the County's appraiser that you are close to being finished, then the County can start looking at the Five Hundred and Something Thousand Dollar range for your home.

**Brad Jones**  
Attorney at Law  
Admitted to practice in Washington and Oregon

GORDON THOMAS HONEYWELL  


Tacoma Office  
1201 Pacific Avenue, Suite 2100  
Tacoma, Washington 98402  
<http://www.gth-law.com>  
T 253 620 6485  
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18 JAN 03 AM 10:47

THE HONORABLE CATHERINE SHAFFER

KING COUNTY

SUPERIOR COURT CLERK

E-FILED

CASE NUMBER: 15-2-08235-3 KNT

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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE, and THOMAS  
and MARIE DICKENS,

Plaintiffs,

v.

KING COUNTY, a municipal corporation,

Defendant.

NO. 15-2-08235-3 KNT  
(CONSOLIDATED WITH  
NO. 15-2-08485-2 KNT)

**DECLARATION OF  
STEPHEN J. TAN IN SUPPORT OF  
PLAINTIFF KAY'S MOTION FOR  
STATUTORY ATTORNEYS' FEES  
AND COSTS**

Pursuant to RCW 9A.72.085, the undersigned hereby declares that:

1. I am an attorney with the firm of Cascadia Law Group PLLC, which represents Plaintiffs Thomas and Marie Dickens in this action. I have personal knowledge of the facts set forth in this declaration and am fully competent to testify in this matter.

2. Brad Jones, counsel for plaintiffs Sharon Kay and Jim Howe, and I participated in a mediation with King County in early December of 2016. The mediation was unsuccessful.

3. Shortly thereafter, Tom Harris called Brad Jones and I and relayed new offers on behalf of the County. The offers were relayed verbally and were contingent upon our clients transferring title to their properties to King County. I have reviewed Brad Jones email of December 6, 2016 to his clients and I agree with his description of that call.

4. The County never made a written offer to my clients to settle this case until August of 2017.

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5. Every offer I am aware of that was made to Mr. Jones or to me was contingent on transferring title to the County.

I hereby declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 3rd day of January, 2018 at Seattle, Washington.

s/ Stephen J. Tan  
\_\_\_\_\_  
STEPHEN J. TAN

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of January, 2018 I served a copy of the foregoing on the following persons, via email:

Timothy J. Repass  
Wood, Smith, Henning & Berman LLP  
520 Pike Street, Ste. 1525  
Seattle, WA 98101-4001  
[trepass@wshblaw.com](mailto:trepass@wshblaw.com)  
[rfaulds@wshblaw.com](mailto:rfaulds@wshblaw.com)  
[cborgman@wshblaw.com](mailto:cborgman@wshblaw.com)

**Attorneys for Defendant**

Bradley B. Jones  
Reuben Schutz  
Gordon Thomas Honeywell LLP  
1201 Pacific Ave., Ste. 2100  
Tacoma, WA 98402  
[bjones@gth-law.com](mailto:bjones@gth-law.com)  
[rschutz@gth-law.com](mailto:rschutz@gth-law.com)  
[gdowns@gth-law.com](mailto:gdowns@gth-law.com)  
[jholder@gth-law.com](mailto:jholder@gth-law.com)  
[dwilliams@gth-law.com](mailto:dwilliams@gth-law.com)  
[rramirez@gth-law.com](mailto:rramirez@gth-law.com)

**Attorneys for Plaintiffs Kay and Howe**

s/ Suzanne Powers  
\_\_\_\_\_  
Suzanne Powers, Paralegal

**FILED**  
KING COUNTY, WASHINGTON

JAN 10 2018

SUPERIOR COURT CLERK  
BY Nicolas Ceja  
DEPUTY

THE HONORABLE CATHERINE SHAFFER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE,

Plaintiffs,

v.

KING COUNTY, a municipal corporation,

Defendant.

No. 15-2-08235-3 KNT (CONSOLIDATED  
WITH NO. 15-2-08485-2 KNT)

~~PROPOSED~~ ORDER DENYING  
PLAINTIFF KAY'S MOTION FOR  
STATUTORY ATTORNEYS' FEES AND  
COSTS

THIS MATTER, having come before the undersigned Judge of the above-entitled Court, upon Plaintiff Kay's Motion for Statutory Attorneys Fees and Costs, and having reviewed the following documents:

1. Plaintiff Kay's Motion for Statutory Attorneys' Fees and Costs;
2. Declaration of Brad Jones in Support of Plaintiff Kay's Motion for Statutory Attorneys' Fees and Costs;
3. Defendant King County's Response to Kay's Motion for Statutory Attorneys Fees and Costs;
4. Declaration of Timothy J. Repass in Support of King County's Response to Kay's Motion for Statutory Attorneys Fees and Costs;

~~PROPOSED~~ ORDER DENYING PLAINTIFF  
KAY'S MOTION FOR STATUTORY ATTORNEYS'  
FEES AND COSTS - 1

WOOD, SMITH, HENNING & BERMAN LLP  
520 Pike Street, Suite 1525  
Seattle, Washington 98101-4001  
206-204-6800

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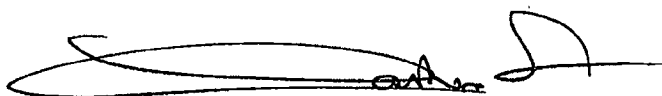
5 Plaintiff Kay's Reply, if any;

6. \_\_\_\_\_;

7. \_\_\_\_\_.

IT IS HEREBY ORDERED that Plaintiff Kay's Motion for Statutory Attorneys Fees and Costs is denied.

DATED this 10 day of January, 2018.

  
\_\_\_\_\_  
JUDGE CATHERINE SHAFFER

Presented By:  
WOOD SMITH HENNING & BERMAN LLP

\_\_\_\_\_  
Timothy J. Repass, WSBA #38373  
Philip B. Grennan, WSBA #8127  
Attorneys for Defendant

Approved as to Form:  
GORDON, THOMAS, HONEYWELL LLP

\_\_\_\_\_  
Bradley B. Jones, WSBA #17197  
Rueben Schutz, WSBA #44767  
Attorneys for Plaintiffs Kay and Howe

LEGAL:05488-0407/8377498.1

~~PROPOSED~~ ORDER DENYING PLAINTIFF  
KAY'S MOTION FOR STATUTORY ATTORNEYS'  
FEES AND COSTS - 2

WOOD, SMITH, HENNING & BERMAN LLP  
520 Pike Street, Suite 1525  
Seattle, Washington 98101-4001  
206-204-6800

**FILED**  
KING COUNTY, WASHINGTON

DEC 11 2017

SUPERIOR COURT CLERK  
BY Nicolas Ceja  
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

SHARON KAY and JIM HOWE,

Plaintiffs,

v.

KING COUNTY SOLID WASTE DIVISION, a  
municipal corporation,

Defendant.

NO. 15-2-08235-3 KNT (Consolidated with  
No. 15-2-08485-2 KNT)

~~PROPOSED~~ JUDGMENT ON VERDICT

HONORABLE CATHERINE SHAFFER  
Hearing Date: December 11, 2017  
Hearing Time: 4:00 pm

JUDGMENT SUMMARY

This judgment is based on findings by a jury that King County's acts or omissions were negligent, created a nuisance and damaged the value of Sharon Kay's property.

A.	Judgment Creditor	Sharon Kay and Jim Howe
B.	Attorney for Judgment Creditor	Bradley B. Jones
C.	Judgment Debtor	King County, a Washington municipal corporation
D.	Attorney for Judgment Debtor	Tim Repass
E.	Principal Judgment Amount on Negligence and Nuisance Claims	\$50,000 to Jim Howe \$50,000 to Sharon Kay

[PROPOSED] JUDGMENT ON VERDICT  
- 1 of 5  
(15-2-08235-3 KNT)  
[4839-7572-1048]

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 - FACSIMILE (253) 620-6565

**APPENDIX F**



1 F. Judgment on Inverse Condemnation Claim

2	1) Fair Market Value Unimpaired	\$650,000
3	2) Fair Market Value Impaired	<u>\$585,000</u>
4	3) Inverse Condemnation Damages	\$65,000
5	4) Date Inverse Condemnation Commenced	December 7, 2013
6	5) Interest on Inverse Damages to Date of Judgment	\$31,221.37
7		
8	6) Total Inverse Damages	\$96,221.37

9 G. Attorney's Fees To be determined

10 H. Costs To be determined

11 I. TOTAL JUDGMENT \$196,221.37

12 J. Judgment on the negligence and nuisance claims shall bear interest at the rate of  
13 3.327% per annum.

14 K. Judgement on the inverse condemnation claim shall bear interest at the rate of  
15 12% per annum.

16 JUDGMENT AND ORDER

17 THIS MATTER was tried by a jury beginning September 19, 2017, the Honorable  
18 Catherine Shaffer presiding. Plaintiffs Howe and Kay appeared personally and through  
19 their attorney Bradley B. Jones of Gordon Thomas Honeywell. Defendant King County  
20 appeared personally and through its attorney Tim Repass of Wood Smith Henning &  
21 Berman, LLP.

22 The parties presented evidence and testimony to the jury. On October 16, 2017,  
23 after deliberation, the jury returned a verdict in favor of the Plaintiffs, finding Defendant  
24 was negligent, had caused a nuisance and had damaged the value of the Kay property.  
25 The jury awarded Kay and Howe \$50,000 each on their negligence and nuisance claims.  
26

[PROPOSED] JUDGMENT ON VERDICT

- 2 of 5  
(15-2-08235-3 KNT)  
[4839-7572-1048]


LAW OFFICES  
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1 The jury determined the unimpaired fair market value of the Kay property at the time of  
2 trial without regard to Plaintiffs' claims to be \$650,000 and the unimpaired fair market  
3 value of the Kay property at the time of trial, taking into account Defendant's proven acts  
4 or omissions, to be \$585,000, or a \$65,000 inverse damage amount. The jury also  
5 determined the damaging commenced on December 7, 2013. The \$65,000 of inverse  
6 condemnation damages is subject to twelve percent (12%) statutory simple interest from  
7 the date of the damaging to the date of the Judgment. The Court finds this amount is  
8 \$31,221.37 and when combined with the \$65,000 jury award equals a total amount of  
9 inverse condemnation damages of \$96,221.37. Plaintiff has moved for a judgment on  
10 the verdict.  
11

12 ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that judgment is  
13 entered against King County and in favor of Sharon Kay in the amount of \$146,221.37  
14 and in favor of Jim Howe in the amount of \$50,000 for a total judgment amount of  
15 \$196,221.37. Attorneys' fees and costs will be subject to a later motion.  
16

17 This judgment is entered pursuant to the jury's findings that the Defendant was  
18 negligent, caused a nuisance and damaged the value of the Kay property.  
19

20 DONE IN OPEN COURT this 11 day of December, 2017.  
21

22   
23 By \_\_\_\_\_  
24 JUDGE CATHERINE SHAFFER  
25  
26

[PROPOSED] JUDGMENT ON VERDICT  
- 3 of 5  
(15-2-08235-3 KNT)  
[4839-7572-1048]

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
TACOMA, WASHINGTON 98402  
(253) 620-6500 - FACSIMILE (253) 620-6565

1 Presented by:

2 GORDON THOMAS HONEYWELL, LLP

3  
4 By s/Bradley B. Jones  
5 Bradley B. Jones, WSBA 17197  
6 Attorneys for Plaintiffs Kay/Howe

7 Approved as to form:

8 WOOD SMITH HENNING BERMAN, LLP

9  
10 By \_\_\_\_\_  
11 Tim Repass, WSBA 38373  
12 Attorneys for Defendant

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[PROPOSED] JUDGMENT ON VERDICT  
- 4 of 5  
(15-2-08235-3 KNT)  
[4839-7572-1048]

LAW OFFICES  
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(253) 620-6500 - FACSIMILE (253) 620-6565

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/1/2019 3:36 PM  
BY SUSAN L. CARLSON  
CLERK

NO. \_\_\_\_\_  
(Court of Appeals No. 77935-4-I)

**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

---

**SHARON KAY and JIM HOWE,**

**Respondents,**

**and**

**THOMAS and MARIE DICKENS,**

**Defendants,**

**vs.**

**KING COUNTY, a municipal corporation,**

**Petitioner.**

**AFFIDAVIT OF SERVICE**

---

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF KING         )

The undersigned, being first duly sworn on oath, deposes and says:

That she is a citizen of the United States of America; that she is over the age of 18 years, not a party to the above-entitled action, and competent to be a witness therein; that on August 1, 2019, affiant served via

Washington State Court of Appeals electronic filing system copies of the following documents on the following parties:

1. Respondent's Petition for Review; and
2. Affidavit of Service

Bradley B. Jones  
 Reuben Schutz  
 Gordon Thomas Honeywell LLP  
 1201 Pacific Avenue, Suite 2100  
 Tacoma, WA 98402

Timothy Repass  
 Wood Smith Henning & Berman, LLP  
 520 Pike Street, Suite 1525  
 Seattle, WA 98101-1351

Stephen J. Tan  
 Valerie K. Fairwell  
 Cascadia Law Group PLLC  
 1201 Third Avenue, Suite 320  
 Seattle, WA 98101-3075

DATED this 1st day of August, 2019.

Angelina de Caracena  
 Angelina de Caracena

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF KING )

SIGNED AND SWORN to (or affirmed) before me on Aug 1 2019 by Angelina de Caracena.



Carolyn Lafferty  
 Print Name: CAROLYN LAFFERTY  
 Notary Public Residing at EVERETT  
 My appointment expires 8-22-22

*W. C. Cresson*

14



**REED MCCLURE**

**August 01, 2019 - 3:36 PM**

**Filing Petition for Review**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** Sharon Kay, Appellant v. King County Solid Waste Division, Respondent (779354)

**The following documents have been uploaded:**

- PRV\_Cert\_of\_Service\_20190801153120SC897024\_3805.pdf  
This File Contains:  
Certificate of Service  
*The Original File Name was Affidavit of Service.pdf*
- PRV\_Petition\_for\_Review\_20190801153120SC897024\_4441.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was Petition for Review.PDF*

**A copy of the uploaded files will be sent to:**

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- rfaulds@wshblaw.com
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- stan@cascadialaw.com
- trepass@wshblaw.com
- vfairwell@cascadialaw.com

**Comments:**

Petition for Review; Affidavit of Service

---

Sender Name: Angelina de Caracena - Email: adecaracena@rmlaw.com  
**Filing on Behalf of:** Marilee C. Erickson - Email: merickson@rmlaw.com (Alternate Email: )

Address:  
1215 Fourth Ave., Ste. 1700  
Seattle, WA, 98161  
Phone: (206) 386-7060

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