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65201-0

CASE NO. 65201-0-1

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

ROBERT B. STRUTHERS AND VITEZSLAVA OTRUBOVA

Appellants,

v.

CITY OF SEATTLE

Respondent.

REPLY BRIEF OF APPELLANTS

Robert B. Struthers, pro se
10514 Riviera Place NE
Seattle, WA 98125

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I. INTRODUCTION

The City of Seattle vigorously opposed Robert B. Struthers and Vitezslava Otrubova's motion to consolidate Appeal No. 6394-9-I and this Appeal No. 65201-0-I, stating that it was "much too late in these proceedings to effect any meaningful efficiencies". Commissioner James Verellen agreed in part, and ruled that the two appeals would be linked for consideration on the merits before the same panel of judges, subject to conditions imposed on this reply brief. His decision did not prevent the City of Seattle from burdening all parties with a dramatic retelling of the first case¹, spanning the first fifteen pages of their fifty page Respondent's Brief.

Pursuant to RAP 10.3(c), a reply brief will be limited to the issues presented to the Court for review in this appeal. That is:

Whether inverse condemnation claims are properly dismissed, with prejudice, where the damage from a government project occurs without payment of just compensation.

The other issues raised in this appeal have been adequately addressed in the Appellants' Brief and do not require further discussion in this Reply.

II. STATEMENT OF FACTS

On August 26, 1954, Leiter Hockett submitted a letter to the Lake City Sewer District, requesting payment for extra work on Unit No. 1C, Schedule "C", Deep Water Outfall. CP 288-290. Appellants Robert B. Struthers and Vitezslava Otrubova own a home on Riviera Place NE in Seattle, directly south of this outfall. See CP 4. Ms. Otrubova and Mr. Struthers sued the City of Seattle on May 27, 2008, claiming inverse

¹ With the City of Seattle cast as David, and the pro se plaintiffs cast as Goliath.

condemnation. CP 1-10. The City of Seattle filed their first Motion for Summary Judgment on November 7, 2008. CP 11-24. On January 22, 2009, Honorable Judge Douglas McBroom issued an order denying the City of Seattle's first motion for summary judgment. CP 164-167. On December 5, 2008, an order was entered appointing Judge Laura Inveen to replace retiring Judge Douglas McBroom. CP 162-163. Discovery cutoff was set for September 21, 2009. CP 851. The City of Seattle filed a second Motion for Summary Judgment on September 4, 2009, which was three weeks before discovery cutoff. CP 178-205. This motion was granted, with prejudice, and so ordered by Judge Inveen on October 2, 2009. CP 231-232. In the Order Granting City of Seattle's Motion for Summary Judgment, Judge Inveen ruled:

Plaintiffs' expert Hagar has testified that the project has improved the value of the Plaintiffs' property.

Robert B. Struthers and Vitezslava Otrubova filed a timely motion for reconsideration on October 12, 2009. CP 233-244. Robert B. Struthers and Vitezslava Otrubova filed a supplementary motion for reconsideration on October 19, 2009. CP 350-353. This motion was filed with a declaration and photographs of damage resulting from a large rainstorm on October 17, 2009. CP 325-349. Judge Inveen denied the plaintiff's Motions for Reconsideration on March 8, 2010. CP 354-355. On the same day, she signed a judgment against the plaintiffs. CP 843-848.

III. ARGUMENT

A. The Claim of Inverse Condemnation

The City of Seattle's Respondent's Brief begins with the phrase "second bite of the apple". The City appears to be obsessed with dental work. This fixation on teeth first publicly appeared in a presentation by the

project engineering team before the SPU Asset Management Committee. The author of that presentation drew teeth on the photograph of a 48” ductile iron pipe that is pointed directly at the Otrubova-Struthers residence. CP 93. This presentation reflects a subconscious design goal of the Meadowbrook Outfall Rehabilitation Project, which is to eat away at the Otrubova-Struthers property with storm water diverted from Thornton Creek, unseen, underground, until the residence and the property it stands on are worthless. There could be no clearer example of inverse condemnation.

B. Sinkholes Do Not Improve Value.

The Respondent’s Brief applies pretzel logic to make its case. An important example is found on page 39:

Indeed, the evidence on the Motion established that the Project improved the value of her property: Her own expert appraiser agreed in deposition that the Project “actually improves the value” of her property.

The City of Seattle does not expand on the complex set of questions posed in that deposition that finally led to this optimistic statement. A full reading of the deposition of Richard Hagar (CP 766-774) shows what this appraiser agreed to was a *reduction in the diminution* of value of the Otrubova-Struthers residence. By engaging in this line of questioning in deposition, and seizing on a favorable answer as the linchpin of their argument for summary judgment, the City is admitting that a diminution of value **has** occurred.

The City’s purported increase in value was based on two points in time, and leads to an obvious result. The first point in time was *before* the City of Seattle endeavored to repair three visibly damaged corrugated metal pipes in Lake Washington, which lay directly to the north of the

Otrubova-Struthers property. The second point in time was *after* the Meadowbrook Outfall Rehabilitation Project had closed, leaving the two surviving underwater outfall pipes covered with a coating of fish mix gravel. What Richard Hagar stated was that the City of Seattle performed a needed repair to its own damaged infrastructure. The City's unrepaired damage was apparent to any casual observer and caused a diminution in value of the neighboring properties. By effecting needed repairs to the City's infrastructure, the corresponding diminution in value of neighboring properties was reduced. The City deftly turns this double negative (reduction in the reduction of value) into a positive and trumpets a putative "increase in value". Any reader of the Hagar deposition would be confused. The Rehabilitation Project had simply reduced an acknowledged diminution in value. The plaintiffs' first Motion for Reconsideration of October 12, 2019 was filed with the Declaration of Richard Hagar. CP 245-248. In this declaration Mr. Hagar states:

To be very clear, and very concise, my professional opinion on this matter is:

a. Based upon our analysis, the problems experienced from the long-standing and recurring issues with the Meadowbrook Outfall and its proximity to the subject property, ***has*** caused a diminution in value of the plaintiffs' property.

b. Even after completion of the repairs, to the Meadowbrook Outfall and the subject property, the subject property will ***still*** experience a diminution in market value.

c. The current slow market conditions actually ***amplify*** the magnitude of any diminution in value, in that buyers have a large supply of homes to choose from and will prefer alternatives that have no known history of problems.

d. The value of the residence will not be restored to its pre-damage level until, at a minimum, considerable time has

passed, general market conditions improve, there are no additional problems to the repairs, and there has been no recurrence of the original problems.

C. The Record Under Review Should Not Be Limited

The City of Seattle asserts in pages 22 and 38 of their Respondent's Brief that Appellants presented no evidence that the Rehabilitation Project caused a diminution in their property value. The City of Seattle then claims at page 28 that Richard Hagar's clarification not be considered under review, claiming that this declaration was out of scope. This statement is at odds with Judge Inveen's order to granting summary judgment:

The Court has considered: (a) the City of Seattle's Motion for Summary Judgment and the Declaration of Thomas J. Breen and Exhibits A-JJ attached thereto; (b) Plaintiffs' opposition memorandum and exhibits attached thereto;

CP 231. The City ignores the Plaintiffs' Response to Motion for Summary Judgment, part of the plaintiffs' opposition which states, in part:

Richard Hagar is an expert witness for the plaintiffs. He produced, with Graham Albertini, a report on the diminution of value of the plaintiffs' residence that is attributable to the City's actions. The credentials of these distinguished local experts are beyond reproach. Mr. Albertini is currently a candidate for the office of King County Assessor. The report was cited by Judge McBroom as a basis to deny City's first motion for summary judgment.

CP 215. The Hagar-Albertini report was already before the trial court, in the interest of judicial economy, the plaintiffs did not re-file this report.

The issue placed by Robert B. Struthers and Vitezslava Otrubova before this Court for review was whether the claim of inverse condemnation was properly dismissed by the trial court. This issue was not limited to the pleadings before one judge, or one motion for summary

judgment from the City. Two Superior Court judges presented with the same evidence in this case came to opposite conclusions. In an appeal before the Washington Supreme Court of a motion for summary judgment, Meissner v. Simpson Timber Company, 69 Wn.2d 949, P.2d(1966) the Court found at 951:

If, from this evidence, reasonable men could reach only one conclusion, the motion should be granted.

Two reasonable judges reached two opposite conclusions. Thus, Robert B. Struthers and Vitezslava raise this issue before this Court.

The claim on inverse condemnation was not dismissed until Judge Inveen denied the plaintiffs' motions for reconsideration and signed the order of judgment on March 8, 2010. Robert B. Struthers and Vitezslava Otrubova did not limit the record on review to a specific date, or a specific ruling. All records put forth on review, including the two Motions for Reconsideration before Judge Inveen, and all the pleadings before Judge McBroom, are relevant and should be reviewed by this Court.

CR 59(a) permits a motion for new trial, reconsideration and amendment of judgments to be granted for any one of several causes materially affecting the substantial rights of a party. The two motions for reconsideration filed by the plaintiffs who brought forth newly discovered evidence, which could not have reasonably been discovered and produced at trial of the first case or the second summary judgment hearing in the second case. Particularly, the discovery of relevant historical documents in the City of Seattle Archives and the appearance of new sinkholes in the plaintiffs' yard immediately following the only significant rain of the season on October 17, 2009. CP 233-244, CP 325-354.

The City repeatedly claims in their Respondent's Brief that there is no evidence to support a claim of inverse condemnation. If nothing else, the Declaration of Richard Hagar, filed November 14, 2008 in case 07-2-21844-1, and its attached exhibit, a Diminution of Value Analysis on 10514 Riviera Place NE were provided to Honorable Douglas McBroom. Judge McBroom, in his Order Denying City of Seattle's Motion for Summary Judgment specifically stated that he had reviewed the:

9. Declaration of Richard Hagar, with attached exhibit;
CP 164-165. Mr. Hagar, in his declaration file October 19, 2009 refers to this report:

Attached hereto as Exhibit A is a true and correct copy of this report, titled Diminution of Value Analysis of 10514 Riviera Place NE, prepared for Bruce Struthers and Vitezslava Otrubova in October, 2008.

and condemns a distortion of his professional opinion:

I have reviewed the City's Reply in Support of the Motion for Summary Judgment filed by the City of Seattle on September 28, 2009. I have (sic) am very concerned that excerpts of an unsigned copy of the transcript of my deposition have been taken out of context and provided in such a limited way that it inaccurately conveys my opinion, as it relates to the subject property. Under the Uniform Standards of Professional Appraisal Practice (USPAP) it would be inappropriate for me to allow my report, conclusions or statements to be improperly utilized, as I believe it has in this instance. It is essential that my position be clearly understood by all parties and not misinterpreted.

CP 246-247. Robert B. Struthers cannot locate Mr. Hagar's report in the clerk's papers that have been transmitted from the Superior Court to this Court. The court papers list docket submission number 86 as being four pages long. However, both Honorable Judge McBroom and Mr. Hagar

specifically reference this report. Mr. Hagar states in his October 19, 2009 declaration:

The report my firm created, regarding the impact to the subject's value, was twenty four page in length and referenced an appraisal that was, at least, fifteen pages in length.

CP 247. Mr. Hagar's declaration, filed in Superior Court case 07-2-21844-1, was transmitted to this Court in Appeal No. 63943-9 as CP 1030-1056.

D. The Whipsawing Continues

The City of Seattle argues at considerable length, starting page page 29 of their Respondent's Brief, that all claims were "fully and fairly litigated". This repeated statement reflects a municipal sense of irony. Judge McBroom saw through the City's technique in the Verbatim Report of Proceedings of the hearing of the first motion for summary judgment:

THE COURT: But what am I doing with the -- am I depriving them -- and this is my last question. Your argument is expertly delivered, as was your brief. But I'm concerned about the diminution in value, the stigma that's attached to their property. If I grant your motion, they are standing there holding the bag with the stigma, aren't they?

CP 598. Yet, the city persists with assertions of fair and full litigation, to support their defense resting on the doctrine of collateral estoppel.

E. Analysis of Case Law

The City of Seattle's presentation of case law requires a comprehensive review to get to the true facts. This runs contrary to the stern admonitions in the City of Seattle's Motion to Strike Appellants' Motion to Consolidate at 5:

The purpose of the requirements that factual statement in briefing be supported by a reference to the Record on Review "is to enable the court and opposing counsel efficiently and expeditiously to review the accuracy of the

factual statements in the briefs[.]” Hurlbert v. Gordon, 64 Wn. App. 386, 400, 824 P.2d 1238 (Div. 1, 1992).

The City uses its citations to present views completely at odds with the position of the authors of these opinions. Examples of the City’s misrepresentative analysis of the case law follow.

1. Bodin v. City of Stanwood

On page 40 of the Respondent’s Brief, the City again cites Bodin v. City of Stanwood, 79 Wn. App. 313, 314 (1995). The City attempts to minimize the likelihood of damage by categorizing these as “fears” and says that fear of damage does not constitute inverse condemnation. The City does not explain how this “fear” of damage came to be shared by Leiter Hockett, the contractor who built Meadowbrook Outfall in 1954. CP 289. The City confuses fear of failure with good engineering practice that incorporates design features to avoid failure. Judge McBroom saw that fear did belong in this case, but the fear was supported by the expert opinion of appraiser Richard Hagar:

THE COURT: Well, it doesn't state a tort claim because all the plaintiffs got is -- I don't see how it states a tort claim. The plaintiffs have fear that there will be damage to their land. And that's not a recognizable tort claim. I know it's not.

But the plaintiffs are alleging damage coming from another quarter, which is that anybody that looks up this property, an educated appraiser or property buyer is going to look at this property and see all the problems. They are going to bring their inspector around, and the inspector is going to say it's a bad deal.

I don't think the plaintiff quite said that. The appraiser says that if they do, the price of the property will go down. Maybe it is a fear that they will look askance at this property somehow.

CP 596-597. The City persisted, with the same argument presented in the Respondent's Brief. Honorable Judge McBroom did not buy the City's argument, as demonstrated in the Verbatim Report of Proceedings.

THE COURT: I now remember why I didn't read the Bodin case, but I'm certainly considering it and will read it. But Phillips is a Supreme Court case that happened subsequent to the Bodin case. So I would think that Phillips, when they talk about damage to the property – I mean, it doesn't overrule Bodin, but isn't it a more important case?

MR. BRUCE: Fair enough. And I will talk about Phillips now.

CP 583-584. Judge McBroom read the Bodin case at recess before returning to present his findings. Judge McBroom specifically cited Phillips v. King County, 136 Wn.2d 946, 968 P.2d 871 (1998). CP 625:

THE COURT: It makes me wish I was a Court of Appeals Judge so I could write an opinion on this case.

I am going to deny Defendant City of Seattle's motion for summary judgment. I find that under the Phillips case, there is a genuine issue of material fact as to whether or not an unconstitutional taking occurred as an unintended consequence. The city's recently completed work on an outfall system. I find that the plaintiffs have carried their burden in showing that there is an issue as to whether damage occurred to their property. They carried this burden through the declaration of Mr. Struthers, one of the owners; Mr. Roop, the surveyor who testified as to the location of the wall between the plaintiffs' property and the city's; the declaration of property appraiser Mr. Dilio and Mr. Hager, another property appraiser's declaration; and attached report which is sworn to in the declaration.

The genuine issue of material fact found by Honorable Judge McBroom was not washed away in the subsequent June 2009 trial of Superior Court Cause No. 07-2-21844-1. Judge González did not permit the claim of inverse condemnation to be heard before this jury. In the

Verbatim Report of Proceedings of the hearing of the City's first Motion for Summary Judgment in cause 08-2-1762-5, Judge McBroom recalls his conversation with Judge González as to why inverse condemnation was dismissed in the previous case:

THE COURT: I'm going to put on the record my conversation with Judge González, which was very brief. But the bottom line question was: Did you refuse to access the amended complaint on procedural grounds or substantive grounds?

And I understood him to say procedural. And then I didn't explore it any further.

The only procedural ground I can think of is he didn't like the fact that this amendment was coming late in the game, six months before a trial. What you have said, I would have done it differently. Six months before trial, in which no depositions have been taken, seems to me like plenty of time for this sort of claim.

CP 599. The City goes on at length in the Respondent's Brief to explain that the claims in the first case are the same as the claims in the second case, and that these were all properly dismissed. Such assertions are at odds with a discussion between the City's attorney and Judge McBroom:

MR. BRUCE: Exactly. So the new theory by which the plaintiffs seek to get inverse condemnation back in the Judge González case is —

THE COURT: It's not the same claim. Would you agree with that?

MR. BRUCE: I do. The factual predicate for the claim is different.

CP 576.

2. **Wilber v. Rowland—1974 Supreme Court.**

In the Respondent's Brief at 47 the City asserts:

Further, Wilber does not hold that the compensable injury in that case is necessarily a taking: the interference with plaintiff's property may be merely a trespass. 83 Wn.2d at 876.

The City confuses two claims before the trial court in the Wilber case.

One claim pertained to the construction of a ditch on the plaintiff's land.

The second claim was that more water was carried on the plaintiff's land

than would have naturally reached this land. Wilber Dev. Corp. v.

Rowland Constr. 523 P.2d 186 –Wash 83 Wn.2d at 872. The word

“trespass” appears in two places in the opinion, at 874:

An affidavit of a real estate appraiser filed on behalf of the plaintiff, stated that the market value of the land had been adversely affected by reason of the fact that surface water was being collected and discharged upon the land from storm sewers.

The trial court was of the apparent view that the uncontradicted statement in the defendants' affidavits that the water level had not risen in the swamp, was proof that the amount of water discharged upon the land from the storm sewer system was not greater than the amount which had drained there naturally before the platted lands were developed. While it recognized that the defendants had *trespassed* upon the plaintiff's land to construct ditches for the channeling of the water, it was of the apparent opinion that any damage resulting was of a temporary nature and not compensable in this action.

and at 876:

Certainly the ditching done upon the plaintiff's land is compensable, if it has in fact resulted in damage. Whether it is regarded as a *trespass*, temporary in nature, or an appropriation of easements across the plaintiff's lands to carry the water on its way to its ultimate destination, the necessary parties are before the court and there is no reason to relegate the plaintiff to another action to have its rights determined. *See* Civil Rule for Superior Court 18.

The language at 874 shows just how much the Wilber case parallels this one. In the instant case, appraiser Richard Hagar states that

the market value of the Otrubova-Struthers property has been reduced by the collection and discharge of surface water from storm sewers. CP 245-248. At 875, Justice Hugh J. Rosellini quotes case law that was in effect when the Meadowbrook Outfall was built. He warns against the type of damage now caused by the City of Seattle in the diversion of water from Thornton Creek to Meadowbrook Outfall:

At the same time, it is the rule that the flow of surface water along natural drains may be hastened or incidentally increased by artificial means, so long as the water is not ultimately diverted from its natural flow onto the property of another. Laurelon Terrace, Inc. v. Seattle, 40 Wn.2d 883, 246 P.2d 1113 (1952).

2. **Dickgieser v. State—2005 Supreme Court.**

The City's misdirected analysis continues on page 47 of the Respondent's Brief:

Otrubova's reliance on Dickgeiser v. State, 153 Wn.2d 530, Opening Brief at 29-30, makes no sense. The issue in Dickgieser – whether logging by the State for purposes of producing income and managing assets constitutes a public use – is not relevant to the issues in this case.

Nothing could be further from the truth. The Statement of Facts in the cited opinion (Dickgeiser v. State, 153 Wn.2d 530) clearly states at 28:

As to the inverse condemnation claim, the trial court observed that the Dickgiesers' submissions raised "issues of fact regarding whether or not there's permanent or continuing damage and whether or not such would amount to a constitutional taking and whether there are issues of fact as to whether the State would have the defense provided by the common enemy, outlaw surface water doctrines and so on.

Research into the appeal of the original case in Dickgieser v. State, 76 P. 3d 288, 118 Wash. App. 442 - Wash: Court of Appeals, Div. 2, 2003

produces a clear exposition of what the predecessor case was about and its relevance to the instant case:

The Dickgiesers appeal a summary judgment dismissal of their inverse condemnation claim against the Department of Natural Resources for flood damage to the Dickgiesers' property. A stream runs through the parties' adjoining land. After the Department logged its land, the stream overflowed its banks during heavy rains, flooding the Dickgiesers' land. The principal issue on appeal is whether the Department's logging and improvements to the stream bed on the Dickgiesers' property amount to a public use of either the Department's property or the Dickgiesers' property. If not, the Department is not liable for inverse condemnation.

3. Seal v. Naches-Selah—1988 Court of Appeals, Division Three.

The City's analysis of Seal v. Naches-Selah Irrigation Dist., 51 Wn. App. 1 and Lambier v. Kennewick, 56 Wn. App. 275, 783 P.2d 596 (1989) also falls off point. The Respondent's Brief states at page 48:

The present case is analogous to Seal, not Lambier, because here the government construction of the facility predated the Otrubova's purchase of the property by decades.

The City confuses construction in the 1950s by its predecessor Lake City Sewer District of the Lake City Sewage Treatment Plant, Sand Point Tunnel, and Meadowbrook Outfall with the City of Seattle's re-use of this physical plant through construction of Meadowbrook Pond in 1998 and the incomplete repairs of the Meadowbrook Outfall Rehabilitation Project in 2007 through 2008. Construction of the original sewage treatment plant and outfall spawned several cases in the Superior Court of Washington, County of King². One case, Getzendaner v. United Pac. Ins. Co., 52 Wn.

² Getzendaner v. Lake City Sewer District, Sup. Court of WA Cause No. 480777
Getzendaner v. Lake City Sewer District & the City of Seattle, Sup. Court of WA Cause No. 486206

J. Lowell Kinslow, et al. v. Lake City Sewer District & the City of Seattle, Sup. Court of WA Cause No. 488771

2d 61, 322 P.2d 1089 (1958) was filed to recover damage to the property just north of the Meadowbrook Outfall.

The City's show of confusion so late in this case is disingenuous. Robert B. Struthers and Vitezslava Otrubova have consistently claimed that the Meadowbrook Outfall Rehabilitation Project, initiated by Seattle Public Utilities in response to years of complaints and claims by the appellants, is the source of the damage. Before construction began, the City evaluated several designs of an outfall that would eliminate the recurrence of the damages to the appellants' properties. CP 50. One alternative considered was a complete replacement of the concrete pipes underground. CP 87. Another alternative, to line the existing concrete pipes with carbon fiber, was sent out to bid. This alternative was withdrawn when no contractor would bid on the project. CP 92. The final, constructed design, used poly vinyl chloride pipe sleeves at *some* of the open joints in the underground concrete pipes and constituted an inadequate repair. The final design reduced the carrying capacity of the system by plugging one of the three outfall pipes. This ensured that the surviving two (unlined) concrete pipes would surcharge more frequently and leak storm water under pressure at the joints. With inadequate structural support at the joints, the cracks in the joints will widen, and the cycle of damage will be, and has been, repeated. Glenn Hasegawa, supervising project engineer for the Meadowbrook Pond and Meadowbrook Outfall Rehabilitation project, does not grasp these fundamental concepts of fluid dynamics and pipe design. CP 123-124.

4. **Wong Kee Jun v. Seattle—1927 Supreme Court.**

Matt Malaspina & Co. v. Lake City Sewer District & the City of Seattle, Sup. Court of Washington Cause No. 487550

The City quotes this case in page 46 of their Respondent's Brief:

[T]he courts must look only to the taking, and not to the manner in which the taking was consummated. A mere temporary interference with a private property right in the progress of work, especially such as might have been avoided by due care, would probably be tortious only. Improper blasting, causing debris to be cast upon adjacent property, would seem to be tortious and not a taking or damaging under the constitution; but the removal of lateral support causing slides or any permanent invasion of private property, must be held to come within the constitutional inhibition.

Wong Kee Jun v. Seattle, 143 Wn. 479, 255 P.645 At 505. This quote continues to draw parallels between this case and the cases cited by the City. During the Meadowbrook Outfall Rehabilitation Project, the City removed some of the lateral support, in the form of wooden sheet piles, installed by Leiter Hockett in 1954. CP 153-161. Mr. Hockett explained why he retained these piles after completion of construction:

A change of conditions was made in the original plans and the center line of pipelines was moved some two feet farther South than originally planned and bid upon.

This distance as originally designed was just enough to permit dredging the trench without any retaining wall being necessary to prevent damage to the adjoining property.

Moving the pipes South made it necessary to drive wooden sheet piles behind a wooden waler timber and two brace pipes to prevent by cave in to the adjoining property.

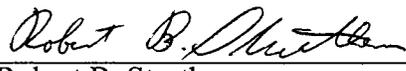
At the end of the work I deemed it advisable to leave these sheet piles in place to assure that there would not be any deterioration of the adjoining property.

CP 289. Leiter Hockett, using the engineering principles and equipment available to him in 1954, understood that excavation of the Meadowbrook Outfall would damage the property directly to the south if a retaining wall were not installed. That retaining wall was damaged during the Meadowbrook Outfall Rehabilitation Project. CP 132-133, 153-161.

IV. CONCLUSION

The City of Seattle can spin the facts, and profess ignorance of the damages caused by the Meadowbrook Outfall, but each major rain storm will prove them wrong. Until the concrete pipes at Meadowbrook Outfall are completely lined or replaced, the value of the adjacent property will diminished. Based on evidence and argument, there is no other reasonable conclusion but that the claim of inverse condemnation should survive.

DATED this 17th day of August, 2010.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

ROBERT B. STRUTHERS and) No. 65201-0-I
VITEZSLAVA OTRUBOVA, husband and)
wife, and the martial community)
thereof,) CERTIFICATE OF SERVICE
Appellant,)
vs.)
CITY OF SEATTLE, a municipal)
corporation,)
Respondent)

The undersigned hereby certifies that a true and correct copy of the following documents:

REPLY BRIEF OF APPELLANT

CERTIFICATE OF SERVICE

were served in person on the following party:

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

Dated this August 17th, 2010 at Seattle, Washington

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