

69639-4

69639-4

No. 69639-4-1

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

GRANDVIEW NORTH, LLC,

Appellant/Cross-Respondent,

vs.

CITY OF BURLINGTON

Respondent/Cross-Appellant.

2013 APR 19 PM 4:34
COMPTON
STATE

Reply Brief of Respondent/Cross-Appellant City of Burlington

SCOTT G. THOMAS
WSBA #23079
Office of the City Attorney
833 South Spruce Street
Burlington, WA 98233
360/755-9473
FAX 360/755-1297

STEPHANIE CROLL
WSBA #18005
Keating, Bucklin & McCormack, Inc., P.S.
800 Fifth Avenue, Suite 4141
Seattle, WA 98104-3175
phone (206) 623-8861
fax (206) 223-9423
Attorneys for Respondent/Cross Appellant

Contents

TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION	1
II. ARGUMENT	2
A. Grandview Misstates the City’s Argument.....	2
1. The written decision Grandview appeals from does not identify a property owner as required by the LUPA statute.....	6
2. Pursuant to RCW 36.70C.040(2), the “property at issue” in this appeal included the neighbor’s property and, therefore, Grandview was required to name and serve its neighbor in this LUPA appeal.	7
3. Grandview’s permit application does include a description of “the property at issue,” and that description includes the neighbor’s easement.....	9
4. A recorded easement constitutes “property at issue” as defined by RCW 36.70C.040(c).	11
B. Grandview’s Neighbor Was Required to be Joined Pursuant to CR 19.....	16
C. Grandview Was Aware That It Was Required To Serve Its Neighbor.....	17
III. CONCLUSION.....	18
Appendix “A”.....	20

TABLE OF AUTHORITIES

Cases

<i>Cathcart-Maltby-Clearview Community Council v. Snohomish County</i> , 96 Wn.2d 201, 207, 634 P.2d 853 (1981).....	15
<i>Coastal Building Corporation v. City of Seattle</i> , 65 Wn. App. 1, 828 P.2d 7 (1992).....	13
<i>Crosby v. Spokane County</i> , 137 Wn.2d 296, 305, 971 P.2d 32 (1999).....	13
<i>Knight v. City of Yelm</i> , 173 Wn.2d 325, 335, 267 P.3d 973 (2011).....	12
<i>National Homeowners Ass'n v. City of Seattle</i> , 82 Wn. App. 640, 643-44, 919 P.2d 615 (1996).....	16
<i>Pfeifer v. Bellingham</i> , 886 P.2d 556, 566, 772 P.2d 1018 (1989)	12
<i>Price v. Kitsap Transit</i> , 125 Wn.2d 456, 463, 886 P.2d 556 (1994).....	12
<i>South Hollywood Hills Citizens Ass'n v. King County</i> , 101 Wn.2d 68, 70, 677 P.2d 114 (1984).....	15
<i>State v. Armendariz</i> , 160 Wn.2d 106, 156 P.3d 201 (2007).....	11
<i>Yakima v. Int'l Ass'n of Fire Fighters, Local 469</i> , 117 Wn.2d 655, 669, 818 P.2d 1076, (1991).....	12
Statutes	
RCW 36.70C.010.....	12
RCW 36.70C.040.....	2
RCW 36.70C.050.....	16
Other Authorities	
BMC 15.16.10.....	18
BMC Title 14	20

I. INTRODUCTION

This Reply Brief is submitted in support of the City's appeal of the trial court's denial of the City's Motion to Dismiss based on Grandview's failure to name and serve all necessary parties as required under the LUPA statute and CR 19. CP 2512 – 2518; 2599 - 2600. In its Opening Brief, the City pointed out that because no person had been identified in the Planning Commission's written decision as the "owner of the property at issue" upon which Grandview's project would be constructed, Grandview was required to examine its land use application to identify those property owners whose property rights would be directly affected, and then obtain the property owner's names and addresses from taxpayer records, in accordance with RCW 36.70C.040 of the LUPA statute. Because Grandview proposed to either build a portion of its project on its southerly neighbor's property, or unilaterally deprive the neighbor of access to a mutual ingress/egress easement shared by them, Grandview's neighbor qualified as an "owner of the property at issue" pursuant to RCW 36.70C.040. As such, Grandview was required to name and serve its neighbor with this LUPA appeal.¹ In addition, the neighboring property owner is clearly an indispensable party pursuant to CR 19, because the

¹ Grandview's neighbor is Burlington Boulevard, LLC. *See, Brief of Respondent/Cross-Appellant City of Burlington* at 5. Because the ownership of the neighboring parcel has changed over the years, we refer to the owner as the "neighbor."

trial court could not grant any of the relief sought by Grandview without the neighbor being subject to the jurisdiction of the trial court.

In response, Grandview argues that the neighboring property is not the “property at issue” in the context of RCW 36.70C.040; that the owner of the neighboring property is not an indispensable Party within the ambit of CR 19(b); and that if the neighboring property owner is an indispensable party, then the City was obligated to notify Grandview of that fact in a timely manner which, Grandview claims, the City did not do.

As discussed below, Grandview’s arguments fall short. Thus, the City respectfully requests the Court of Appeals to reverse the trial court order denying its Motion to Dismiss, and remand this matter to the trial court ordering dismissal of this LUPA appeal on the bases set forth in the City’s motion. This request is in addition to the City’s request that the Court of Appeals also affirm the trial court’s order denying Grandview’s LUPA petition in its entirety on the merits (CP 2494 - 2501), as set forth in the City’ Response brief. *See Brief of Respondent/Cross Appellant*, at 28 - 44.

II. ARGUMENT

A. Grandview Misstates the City’s Argument

In its Opening Brief, the City argued first that in order to comply with RCW 36.70C.040, Grandview was required to follow the statute’s

prerequisites to identify those parties that it was required to serve with a copy of its LUPA petition. *Brief of Respondent/Cross Appellant* at 23. Under RCW 36.70C.040's provisions, Grandview was obligated to first look to the decision Grandview appealed from – in this instance, the written decision of the Burlington Planning Commission (*see* CP 1402) - to identify “[e]ach person identified by name and address in the local jurisdiction’s written decision as an owner of the property at issue.” RCW 36.70C.040 (2)(b)(ii). If no person was identified in the written decision as the owner of the “property at issue,” then Grandview was required to identify and serve each person identified as a taxpayer for that property in the records of the county assessor. RCW 36.70C.040 (2)(c). Further, according to the LUPA statute, the identification of the “property at issue” is to be based upon the property description provided by Grandview in its application. *Id.*

Applying this statutory formula to the record in this case, because the Planning Commission’s decision did not identify the owner of any property, Grandview was required to first examine its own application to identify the “property at issue,” then examine the records of the Skagit County Assessor to identify the taxpayer(s) for that property, and finally effect service on those persons or entities. *Brief of Respondent/Cross Appellant* at 24. Had Grandview carefully examined its own application,

it would have come to the inescapable conclusion that the access drive for its project would either (1) be partially constructed on certain privately owned property of its neighbor that was not subject to their mutual ingress/egress easement, or (2) would be constructed so that it unilaterally deprived Grandview's neighbor of any use of their mutual access easement.² *Id.* As such, the neighboring property was a "property at issue" as defined by the LUPA statute and Grandview was required to serve the taxpayer(s) of that parcel with Grandview's LUPA petition. *Id.* at 25.

Grandview's response to the City's argument is without merit. Grandview first states, without citation to the record, that the "written decision identifies the Petitioner as the 'owner of the property at issue' not [sic] the owner of the adjacent property." *Reply Brief of Appellant* at 2. This statement is inaccurate for two reasons. First, the written decision does not identify the Petitioner (Grandview) as the owner of the property at issue. Second, the City has never claimed that Grandview was the owner of the adjacent property, and this statement is nothing more than a red herring.

² The former owner of Grandview's parcel and the former owner of the neighboring parcel granted each other an ingress/egress easement across the other's parcel. CP 1368; 1952. *See also, Brief of Respondent/Cross-Appellant City of Burlington* at 5.

Next, Grandview admits that its proposed access road was to be constructed within an easement located, in part, upon neighboring property, and goes on to argue that the term “owner” as used in the statute extends only to those owners identified in a project application. *Reply Brief of Appellant* at 1, 6. The problem here is that Grandview ignores additional relevant facts, such as the fact that it proposed to construct its access road not only within the mutual easement Grandview shared with its neighbor, but also extending onto a portion of its neighbor’s wholly owned private property; and the fact that its alternative access road design would have unilaterally deprived its neighbor of any and all use of the easement area. Finally, the record demonstrates that Grandview had not notified its neighbor of its proposed project design at the time it was submitted to the City, and consequently the neighbor had no idea that Grandview intended to build a portion of its access on the neighbor’s wholly owned private property, or that Grandview was intending to convert the mutual access easement into an access road to solely benefit its own property. CP 1389 – 90.³

Grandview goes on to mischaracterize the City’s argument in a way that misses the relevant facts and law entirely.

³ The owner of the neighboring property is Burlington Boulevard, LLC. CP 1886, ¶¶ 4 and 5.

1. The written decision Grandview appeals from does not identify a property owner as required by the LUPA statute.

The LUPA statute, RCW 36.70C.040, provides that a land use petition must be served on (1) the local jurisdiction; (2) each person identified in the local jurisdiction's written decision as an applicant for the permit or approval, if the applicant is not the petitioner; and (3) each person identified in the local jurisdiction's written decision as an owner of the property at issue. RCW 36.70C.040(2)(a) and (b). The decision that Grandview appeals from - the Planning Commission's written decision (CP 1407 - 1413) - identifies Grandview as the project "Applicant." 4 CP 1407. But nowhere in that decision is Grandview, or any other person or entity, identified as a property owner. CP 1407 – 1413. Because Grandview is the Petitioner and is therefore exempted by RCW 36.70C.040 (2)(b) from serving itself with its own petition, and because no person or entity was identified in the City's written decision as a property owner, the conclusion one must reach is that no person or entity was identified under RCW 36.70C.040(2)(b). As such, Grandview was required to go on to RCW 36.70C.040(2)(c) to ensure that everyone required to be included in this land use appeal was named and served.

⁴ Grandview appealed the Planning Commission's decision to the Burlington City Council. CP 1402 - 03. The City Council's written decision similarly identifies Grandview as the project "Applicant," but does not identify Grandview as a property owner. CP 1348 – 56.

2. Pursuant to RCW 36.70C.040(2), the “property at issue” in this appeal included the neighbor’s property and, therefore, Grandview was required to name and serve its neighbor in this LUPA appeal.

According to RCW 36.70C.040(2)(c), the “property at issue” is based upon the description of the property in Grandview’s permit application. *Id.* Once the property at issue is identified, then Grandview is required to name and serve the person(s) or entit(ies) identified in the county assessors records as the taxpayer(s) for that property. Grandview responds, again without citation to the record, that the only property described in its application is Grandview’s own property. *Reply Brief of Appellant* at 3. But Grandview’s argument fails to consider its entire project application, or project design, that the City code required to be submitted – and which was, in fact submitted to the City. (*See* discussion of BMC 15.16.010, *supra.*) This application included a design drawing that showed Grandview’s project encroaching onto its neighbor’s wholly-owned private property. CP 2535, ¶ 5. Then, Grandview’s revised design shows that it’s access road would still be built on a shared access easement with its neighbor – an easement area in which the neighbor has a real property interest. CP 2524; 2531. Thus, the “property at issue” includes Grandview’s neighbor’s property.

Metaphorically as well as physically, if Grandview chooses to construct an access road that attempts to make use of the existing traffic signal installed southerly of its property boundary, then it is caught between a rock and a hard place. On the one hand Grandview could pursue the design it originally submitted to the City for review, CP 1211, which not only utilizes the complete extent of the joint ingress/egress easement that Grandview shares with its neighbor, but also encroaches on its neighbor's property beyond the extent of that easement. *See*, CP 1843 ¶ 5, 1886 ¶¶ 5, 6.⁵

On the other hand, Grandview could attempt to redesign the access drive so that the drive would be situated within the easement (as well as on Grandview's own property), and avoid encroaching on its neighbor's property. But doing so would still deprive Grandview's southerly neighbor of any use of the mutual ingress/egress easement.⁶ In fact, Grandview did consider such a redesign, and submitted a preliminary "draft" –design to the City for comment. CP 1409, ¶ 5; 1417; 1629 – 30,

⁵ There is nothing in the record to suggest that the original design would not result in an encroachment.

⁶ Redesigning the access road is also infeasible because the geometry of such a design does not allow access to Grandview's property by large vehicles such as fire engines, and therefore does not comply with the City's development code. However, this argument goes to the reasons that the City denied Grandview's application, and is merely circumstantially relevant to the issues discussed in this Response Brief, which deal with the City's cross-appeal of its Motion to Dismiss for failure to name and serve all parties required under the LUPA statute. As such, the reader is referred to the *Brief of Respondent/Cross Appellant City of Burlington* at page 17.

¶¶ 23, 24; 2531. Both the initial design and the revised, “preliminary” design were considered by the Planning Commission. The Commission concluded that even the revised “draft/preliminary” proposal would take part of the neighbor’s property to the south, *i.e.*, the easement, without the neighbor’s agreement and deprive the neighboring property owner of any use of the mutual ingress/egress easement. CP 1407, Finding of Fact No. 7 (“[] this plan does not provide access for the bike shop.”)⁷ Moreover, the determination that the project would encroach on the neighboring property was, in the words of the Burlington Planning Commission, a “fatal flaw” of the project. CP 1412, Finding of Fact No. 9. Grandview did not appeal from this finding of fact. *See*, CP 8, ¶ 5.8.

Consequently, regardless of the design option that Grandview chose, it was required to name and serve the neighboring property owner with its LUPA petition.

3. Grandview’s Permit Application Does Include a Description of “The Property At Issue,” and that Description Includes the Neighbor’s Easement.

As the City pointed out in its Opening Brief, the permit application form that Grandview submitted to the City did not include a written

⁷ The neighbor leases its property to the owner of a bicycle shop. CP 1883 ¶ 3.

property description. *Brief of Respondent/Cross Appellant* at 24, CP 1296.⁸ However, the application form does refer to Skagit County Assessor’s parcel identification numbers for two parcels owned by Grandview. While this is helpful, it is not conclusive: consistent with the City’s permit application requirements, Grandview’s application also identifies additional property subject to Grandview’s proposed project.

RCW 36.70B.070 directs local governments to define what constitutes a “complete” permit application. The City has done so, and under Section 15.16.010 of the Burlington Municipal Code (“BMC”), a complete application includes the construction documents necessary for the City to review the permit application.⁹ In the case at bar, Grandview’s construction documents explicitly identify (1) Grandview’s access road located on the neighbor’s privately owned property; and (2) the mutual ingress/egress easement that Grandview proposed to make use of, by parcel identification number. *See*, CP 1210 – 11; 2531.¹⁰ First, it is a given that the “property at issue” includes a neighbor’s property where, as here, the project is shown to be constructed in part on the neighbor’s

⁸ We point out here that the citation to the record in the City’s Opening Brief reads “CP 1926.” We have filed an errata to the City’s Opening Brief, and note the error here again for clarity. The City apologizes for any confusion its initial incorrect citation may have caused.

⁹ A copy of BMC 15.16.10 is attached hereto as **Appendix “A”**.

¹⁰ CP 2531 clearly and unambiguously includes the following notation, describing the easement: “EXISTING NON-EXCLUSIVE EASEMENT FOR INGRESS EGRESS, AND UTILITIES PER A.F. #8904250052.”

wholly-owned real property. Grandview argues, however, that its revised “preliminary” construction drawing cured this defect by removing Grandview’s proposed encroachments from its neighbor’s land. The City does not agree with Grandview, in part because Grandview’s alternate design deprives its neighbor of all use of their mutual, recorded access easement.¹¹ *See*, CP 2531.

In other words, Grandview’s complete application clearly shows that the project will be constructed within the easement area Grandview shares with its neighbor, an easement that has been recorded. And Grandview’s application actually identifies the mutual ingress/egress easement by Skagit County Assessor’s parcel identification numbers. Because a recorded easement in land constitutes a real property interest, even viewing the facts in the light most favorable to Grandview, Grandview was required to name and serve its neighbor in this land use appeal as a matter of law.

4. A recorded easement constitutes “property at issue” as defined by RCW 36.70C.040(c).

The only remaining issue to resolve is what interpretation is to be applied to the term “property at issue,” as employed in RCW

¹¹ CP 2531 depicts a curb as being installed at the edge of the easement, that would prevent the neighboring property from utilizing the easement to access its property. *See also*, note 6 at page 8, above.

36.70C.040(c). Grandview cites *State v. Armendariz*, 160 Wn.2d 106, 156 P.3d 201 (2007), for the principle that if the language of a statute is subject to a single interpretation, then interpretation of that statute is unnecessary. Applying *Armendariz*, Grandview goes on to argue that the term “property at issue” is clear and unambiguous, and does not include any real property interest one has in an easement. *Reply Brief of Appellant* at 4. The City contends that it is clear and unambiguous that the term “property at interest” must include property rights conferred by a recorded easement.

At a minimum, an ambiguity exists. While the principle articulated in *Armendariz* is clear and straightforward, the term “property at issue” is much less so. Indeed, this case precisely illustrates the ambiguity of the statutory language. On one hand, as Grandview urges, the term might refer only to the property owned in fee by a project applicant. On the other hand, the term could encompass real property interests other than a fee simple estate (such as the neighbor’s property interest in the shared easement area), especially when, as here, those property interests will become subject to a local government’s project permit or approval. This Court may find that either interpretation of the term “property at issue” is reasonable. If so, at a minimum, an ambiguity in the statutory language results, *see Yakima v. Int’l Ass’n of Fire*

Fighters, Local 469, 117 Wn.2d 655, 669, 818 P.2d 1076, (1991), and it is appropriate to employ statutory construction tools to divine the intent of the legislature. *Id.* We turn first to the legislature's stated purpose of the LUPA.

The Land Use Petition Act replaced the *writ of certiorari* as the means of appealing a local land use decision. *Knight v. City of Yelm*, 173 Wn.2d 325, 335, 267 P.3d 973 (2011). The legislature's stated purpose in enacting the LUPA was to,

. . . reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review.

RCW 36.70C.010. In Washington, the State Legislature is presumed to know the existing state of the common law, and a statute is not to be construed in derogation of the common law unless the Legislature has clearly expressed its intention to vary it. *Price v. Kitsap Transit*, 125 Wn.2d 456, 463, 886 P.2d 556 (1994). Absent such an expressed intent, the courts should not give a statute that effect. *Pfeifer v. Bellingham*, 886 P.2d 556, 566, 772 P.2d 1018 (1989). Although the legislature expressed its intent in RCW 36.70C.010 to establish uniform procedures and criteria for review, there is nothing in that statute to suggest that the legislature intended to limit, or otherwise preclude, who should be made a party to a

lawsuit that impacts property rights. To be clear, the legislature's stated intent in enacting the LUPA was to reform the "process" for judicial review, but not to change the identity of those parties that would necessarily take part in that process.

Prior to enactment of the LUPA, the common law principle was that,

. . . the owner of property directly affected by a land use decision or *a person with an interest in the property which is the subject of the land use decision* is a party to be joined in writ proceedings involving that decision.

Crosby v. Spokane County, 137 Wn.2d 296, 305, 971 P.2d 32

(1999)(emphasis added).¹² As the *Crosby* court observed, numerous Washington decisions include this same holding, *id.*, which supports a finding that Grandview's neighbor is a necessary party in this LUPA appeal as a matter of law.

To illustrate, in *Coastal Building Corporation v. City of Seattle*, 65 Wn. App. 1, 828 P.2d 7 (1992), the Court considered a case in which a petitioner for a *writ of certiorari* failed to join a neighboring property owner whose sole interest in the petitioner's property was that she had a right to park on the petitioner's property. In that case, a hearing examiner had concluded that the petitioner's lot was not a legal building site because

¹² *Crosby* concerned an application for a *writ of certiorari*, and was commenced in 1993, prior to enactment of the LUPA.

the neighbor had a legally established right to park on the petitioner's lot,
id. at 3, even though the right was not recorded. *Id.* at 5. Applying CR
19, the trial court determined that the neighboring lot owner was an
indispensable party and that the petitioner had failed to perfect its appeal
by failing to join the neighboring property owner. Division One of the
Court of Appeals upheld the trial court, holding that the neighboring
property owners had a substantial legal right that could be affected by the
trial court's ruling. *Id.* at 7. Again, there is no explicit or implicit
indication in RCW 36.70C.010 that by enacting the LUPA, the
Washington Legislature intended to supersede the common law and
deprive property owners with a substantial legal right from automatically
being made a party to a lawsuit that would substantially affect their
property rights.

Moreover, the case at bar aptly illustrates the risks of allowing a
lawsuit to proceed without including all of the parties subject to the trial
court's jurisdiction. Here, without its neighbor's knowledge, Grandview
proposed an access driveway that would either be constructed on the
neighbor's property outside of their mutual easement, or would deprive
the neighbor of any use of its easement. CP 1388, 89. Grandview's
neighbor was ill-prepared to protect its property rights in the trial court, if
the neighbor was unaware that its rights were in jeopardy.

B. Grandview's Neighbor Was Required to be Joined Pursuant to CR 19.

In its Opening Brief, the City argued that even if the trial court had jurisdiction pursuant to RCW 36.70C.040, the trial court was still required to dismiss the lawsuit as a consequence of Grandview's failure to join an indispensable party under CR 19. *Brief of Respondent/Cross Appellant* at 26. Grandview responds, and apparently argues that Grandview's neighbor was not an indispensable party, and that the Land Use Petition Act differs from the writ statute.¹³ *Reply Brief of Appellant* at 10. But Grandview misperceives the law.

In Washington, the law is that property owners directly affected by a land use decision are indispensable to court proceedings. *See, e.g., South Hollywood Hills Citizens Ass'n v. King County*, 101 Wn.2d 68, 70, 677 P.2d 114 (1984) (developer and property owners are indispensable parties); *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 207, 634 P.2d 853 (1981) (property owners affected by rezone are indispensable parties); *National Homeowners Ass'n v. City of Seattle*, 82 Wn. App. 640, 643-44, 919 P.2d 615 (1996)

¹³ In its Response, Grandview misstates the City's argument, claiming that the City argued that a neighboring property owner whose property rights are impacted by a land use decision must be joined pursuant to CR 19 is based upon *Crosby v. Spokane County*, 137 Wn.2d 296, 971 P.2d 32 (1999). *See, Reply Brief of Appellant at 10.* This is error. The City did not cite *Crosby* as support for its argument that Grandview failed to comply with CR 19. Although Grandview's argument cites no authority for support, we proceed to discuss what we understand Grandview's argument to be.

(property purchaser/project developer an indispensable party); *Coastal Bldg. Corp. v. City of Seattle*, 65 Wn. App. at 5, (neighboring lot owner who had legal right to park on affected lot is indispensable party). In a writ of certiorari case, *Cathcart - Maltby - Clearview Cmty. Council v. Snohomish County*, 96 Wn.2d 201, 207, 634 P.2d 853 (1981).

As the City pointed out above, Grandview's neighbor is substantially affected as a result of Grandview's proposal to either construct improvements on the neighbor's property, or deprive the neighbor of access to its shared easement.

C. Grandview Was Aware That It Was Required To Serve Its Neighbor.

Grandview argues further that, pursuant to RCW 36.70C.050, the City was obligated to advise Grandview of the absence of necessary parties. *Reply Brief of Appellant* at 8. In making this argument, Grandview suggests that the City's Motion to Dismiss the case at bar, CP 2512 - 2574, was the first time the City brought this issue to Grandview's attention. This is simply not true, as the record shows.

The record is clear that the City has repeatedly informed Grandview that its neighbor is a necessary party. Starting with the decision Grandview appeals from – the Planning Commission's written decision dated February 16, 2011 – that document notified Grandview that

its proposed improvements extended onto the neighbor's property "well beyond an existing easement," CP 1408, ¶ 3, and went on to conclude that Grandview "propose[d] to take part of the property to the south [the neighbor's property], without agreement from the owner, . . ." CP 1412, ¶ 9. Second, when Grandview brought its initial appeal in 2008, the City brought a motion to dismiss arguing that Grandview had failed to name and serve its neighbor. CP 1909. That notice occurred on August 14, 2008. CP 1912.

Finally, the City's Motion to Dismiss that is on appeal before the Court at this time was filed on September 2, 2011, CP 2514, and the Court heard the motion on September 19, 2011. CP 2598. Grandview had adequate time to serve its neighbor with a copy of its complaint in the current lawsuit, but chose not to do so. Grandview has not been prejudiced, and its argument that the City did not adequately inform Grandview of the need to serve its neighbor is without merit.

III. CONCLUSION

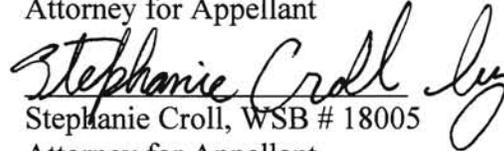
For the foregoing reasons, the Court of Appeals should reverse the trial court's order denying the City's Motion to Dismiss, and remand this matter to the trial court ordering dismissal of Grandview's LUPA appeal.

DATED this 16th day of August, 2013.

Respectfully submitted,



Scott G. Thomas, WSB # 23079
Attorney for Appellant



Stephanie Croll, WSB # 18005
Attorney for Appellant

SET down PER
EMAIL AUTHORIZATION

**Appendix “A”
BMC 15.16.10**

**Chapter 15.16 - REQUIREMENTS FOR BUILDING AND LAND
USE PERMIT APPLICATIONS**

15.16.010 Building Permit Application – Consideration – Requirements.

A. A valid and fully complete building permit application for a structure that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use controls in effect on the date of application.

B. The requirements for a fully completed application shall consist of the elements required by RCW 19.27.095 (State Building Code Act) and Sections 107.1 through 107.3.4 of the International Building Code and subsection (F) of this section, but for any construction project costing more than \$5,000 the application shall include, at a minimum:

1. The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;
2. The property owner's name, address, and phone number;
3. The prime contractor's business name, address, phone number, and current state contractor registration number; and
4. Either:
 - a. The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

b. The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than 50 percent of the total amount of the construction project.

C. The information required on the building permit application by subsections (B)(1) through (4) of this section shall be set forth on the building permit document which is issued to the owner, and on the inspection record card which shall be posted at the construction site.

D. The information required by subsection (B) of this section and information supplied by the applicant after the permit is issued under subsection (E) of this section shall be kept on record in the office where building permits are issued and made available to any person on request. If a copy is requested, a reasonable charge may be made.

E. If any of the information required by subsection (B)(4) of this section is not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting under subsection (A) of this section. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

F. The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW (the State Environmental Policy Act).

G. Civil engineering site plans shall comply with chapter 12.28 BMC and BMC 12.28.090, Plans required, and shall include, at a minimum:

1. A complete set of plans showing plan and profile of a street or parking lot to a scale acceptable to the city engineer and stamped by a registered civil engineer for the state of Washington;
2. The plans shall show all utilities, sidewalks, curb and gutter, typical cross-sections, construction notes and any other details that are necessary to properly build the project;
3. The submittal shall also include a drainage control plan that meets the minimum technical requirements set forth in BMC Title 14. (Ord. 1746 § 2, 2011; Ord. 1708 § 20, 2010; Ord. 1294 § 2, 1995).

CERTIFICATE OF SERVICE

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

DATED: 8-16-13.



Shelley Acero, Paralegal
City of Burlington

I certify that on the 16th day of August, 2013, I caused a true and correct copy of the attached Reply Brief of Respondent/Cross-Appellant City of Burlington regarding case No. 69639-4-1 filed with the COURT OF APPEALS, DIVISION I OF THE STATE OF WASHINGTON to be served on the following in the manner indicated below:

William B. Foster
Hutchison & Foster
4300 – 198th Street SW
Lynnwood, WA 98046-0069

U.S. Mail
 Hand Delivery
 E-mail

Stephanie Croll
Keating, Bucklin & McCormack, Inc., P.S.
Attorneys at Law
800 Fifth Avenue, Suite 4141
Seattle, WA 98104-3175

U.S. Mail
 Hand Delivery
 E-mail