

70467-2

70467-2

No. 70467-2

COURT OF APPEALS OF THE  
STATE OF WASHINGTON, DIVISION ONE

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THE CITY OF SEATTLE, a municipal corporation,  
Respondent,

v.

145<sup>th</sup> AND LINDEN AVE, LLC, a Washington Limited Liability Co.,  
Appellant.

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**BRIEF OF APPELLANT**

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COURT OF APPEALS  
STATE OF WASHINGTON  
FILED  
NOV 12 2012



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## I. INTRODUCTION

This is an appeal from summary judgment regarding landscaping and street access under high voltage power lines. The parties are the City of Seattle and an apartment owner (“Woodland”). The City owns a 50’ wide “transmission right of way” (ROW) located between the Woodland apartments and Linden Avenue, Woodland’s primary street access. The ROW contains City Light’s high voltage power lines located on high towers.

Woodland has two recorded easements over the ROW strip, including a 40’ wide access easement. Both Woodland and its neighbor, a condominium complex, landscaped a portion of the ROW and use a portion for parking. There is no allegation of any interference with City Light’s use of the ROW.

City Light claimed that it owns the ROW in fee simple and was entitled to collect rent from Woodland in accordance with a Temporary Permit dated April 29, 2010. The Temporary Permit recited a monthly payment of \$561 and was subject to cancellation by City Light for any reason on 30 days’ notice or immediately in event of alleged breach.

From the outset, Woodland repudiated the Permit and did not pay any purported rent for several reasons including: (a) Woodland had a right to use the two recorded easements (20’ and 40’ in width) over the ROW,

(b) the person that signed the Permit did not have authority, and (c) the landscaping and related use under the high voltage lines was a benefit to the City. In addition, Woodland was confounded by the fact that City Light did not seek “rent” from the neighboring private condominium complex for the same use.

Two years after the repudiated Permit, City Light delivered a “demand letter” to Woodland in which it threatened to “eliminate” Woodland’s primary street access unless Woodland:

1. Paid two years of alleged monthly “rent” at the rate of \$561 per month, and
2. Executed an *amended* permit with a new monthly rate of \$1,786 per month-- an increase over 300%.

The City expressly asserts that it acted in a proprietary rather than sovereign capacity. As such, it was in the position of a private business threatening to shut down another business unless it agreed to pay triple “rent”.

Shortly thereafter, the City filed this action for alleged “non-payment for use of City-owned property and subsequent trespass”. CP 1. There is no claim for quiet title.

In its Answer, Woodland expressly asserted its right to use its recorded easements and expressly denied that the Permit was signed by an authorized agent. CP 35.

The City conducted no discovery and moved for summary judgment a year later. Despite fundamental issues of material fact regarding existence and effect of the Permit (including recorded easements, whether the power line ROW was owned in fee simple by City Light, and agency authority,) the trial court granted summary judgment. It awarded a judgment for three years of alleged rent and granted City Light's request to remove Woodland from any portion of the ROW—including the recorded easements. CP 303.

Unless reversed, the judgment allows City Light to make good on its threat to "eliminate" Woodland's primary street access--without any trial on the merits or even a claim for quiet title.

## **II. ASSIGNMENTS OF ERROR AND ISSUES**

### **A. Assignments of Error**

1. The trial court erred by granting City Light's motion for summary judgment.

### **B. Issues Pertaining to Assignment of Error**

1. Was it error to grant City Light's motion for summary judgment when genuine issues of fact exist regarding:
  - a. The existence and effect of Woodland's two recorded easements which the judgment purports to eliminate without any claim for quiet title,

- b. Whether City Light owned the ROW in “fee simple” as asserted in its motion for summary judgment, and
- c. Whether the Temporary Permit was executed by an authorized agent.

### **III. STATEMENT OF THE CASE**

Defendant /Appellant 145th and Linden Ave, LLC (“Woodland”) owns an apartment complex known as Woodland Pointe in north Seattle located at 145<sup>th</sup> and Linden Avenue. Woodland purchased its property in 2007.

The primary access is Linden Avenue. Plaintiff/Respondent City of Seattle (“City” or “City Light”) is the owner of a “Transmission Line Right of Way” (“ROW”) located on the west side of Linden Avenue. CP 122. The ROW strip was originally part of the Seattle-Everett Interurban Railway right of way. CP 143, 207. Woodland has two recorded easements over the ROW, a 20’ wide easement and a 40’ wide access easement upon which Woodland’s primary street access is located. CP 123. See Appendix 1 (map). CP 133.

City Light uses the ROW for high voltage power lines. It acquired the ROW as part of a deed from Puget Sound Power & Light Co. in 1951 which transferred various assets including the subject ROW described in the 1951 deed as follows:

Transmission Line Right of Way

North City Limits of Seattle to the King-Snohomish County Line.

A transmission line *right of way* as now located upon the ground and occupied by Puget Sound Power & Light Co. formerly the *right of way* of the Seattle Everett Interurban Railway.....  
[Emphasis added]

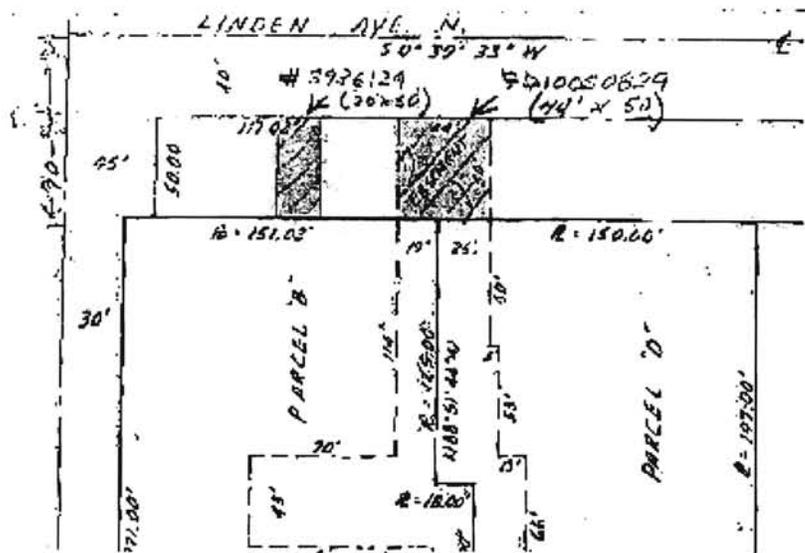
CP 143, 207. By this language the City acquired, at best, a right of way not fee simple title.

Woodland landscaped a portion of the ROW under the high voltage lines adjacent to its property and also used a portion for parking and driveway access. CP 123. Woodland's neighbor to the south, the Cedar Pointe condominiums, likewise "uses" a portion of the ROW. *Id.*

City Light alleges that a Woodland agent, Craig Dwyer, executed a Temporary Permit dated April 29, 2010 which called for a monthly "rental fee" of \$561.94 (including tax). The Permit states that it is cancellable by City Light for any reason upon 30 days' notice or "immediately" in event of any breach. CP 1 (complaint), 11 (Temp. Permit).

Woodland repudiated the Permit and did not pay any monthly rental fee for several reasons: (1) Woodland has two recorded easements over the transmission line ROW, (2) the person who signed the "Permit" was not authorized to do so, (3) Woodland does not interfere with the transmission line ROW and Woodland's landscaping benefits City Light,

and (4) City Light never charged “rent” to Woodland’s neighbor, the Cedar Pointe condominiums for similar “use”. CP 123. For reference, a copy of a map showing the location of the ROW and the recorded easements is set forth in Appendix 1 (CP 133). An excerpt follows:



Two years later, in a “demand letter” dated April, 3, 2012, City Light demanded that Woodland:

- Pay two years of alleged monthly “rent in arrears” under the 2010 Temporary Permit totaling \$16,333 (at \$561/mo.), and
- Execute an amended permit with a new rental rate of \$1,786 per month--- an increase over 300%.

CP 15.

According to the demand letter, the prior owners of the apartment complex had been granted a similar permit “for landscaping and access”.

*Id.* If Woodland did not comply, City Light threatened, among other things to “eliminate access” to Linden Avenue, the primary access to the apartment complex, and pursue this costly legal action. CP 18 (If Woodland fails to comply...“City Light will...eliminate the access through...the City property...”).

The City expressly asserts that it acted in a proprietary capacity. CP 53 (“**Here, the City is not acting in its sovereign capacity but rather in its capacity as landowner for its municipal electric utility**”).

Shortly thereafter, the City filed a complaint alleging two claims: breach of contract (First Claim) and trespass (Second Claim). CP 1. There is no claim for quiet title. Among other defenses, Woodland’s Answer expressly denied that the Permit was signed by an authorized agent and expressly set out Woodland’s recorded easement rights. CP 35.

The City, which conducted no discovery, moved for summary judgment in May 2013. CP 44. In support of its motion, the City filed a single declaration (Norboru Aramaki, City Light agent). CP 54. The motion asserts that the “City has owned the [ROW] property in fee simple since 1951”. CP 45. However, the only “evidence” offered is an Assessor’s summary sheet (CP 58) and an April 2013 title *commitment*. CP 61. As discussed below, the Assessor’s “tax payer” information is not

evidence of fee ownership and a title commitment is not evidence of ownership as a matter of law.

Despite the fact that the City's motion asked the court to remove Woodland, the motion was silent on the issue of the existence and effect of Woodland's two recorded easements (20' and 40'). It was also silent on the issue of agency authority.

In opposition, Woodland submitted the declaration of its managing member, George Webb showing that Craig Dwyer was not a member or manager of Woodland (145<sup>th</sup> and Linden Ave, LLC) and was not authorized to sign the Temporary Permit. CP 123. The Webb Declaration shows the existence of the two recorded easements, shows that there is no interference with the City's high voltage right of way and that the City had not sought rent from Woodland's neighbor for similar "use". *Id.* A survey map showing the location of the ROW and recorded easements is attached as Appendix 1 (CP 133).

The trial court granted summary judgment including a monetary judgment and prejudgment interest totaling \$24,238--based on the purported 2010 "rent" rate and ordered that defendant "stop" any use or occupation of the power line ROW. CP 305 ("Defendant is directed to stop illegally using and occupying the City's property"). The judgment

now allows the City, acting as a private party, to carry out its threat to block Woodland's primary street access.

#### **IV. ARGUMENT**

##### **A. STANDARD OF REVIEW**

The court reviews a summary judgment order de novo. *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn. 2d 264, 270, 208 P.3d 1092 (2009). All facts and inferences are viewed in the light most favorable to the nonmoving party. *City of Spokane v. Spokane County*, 158 Wn. 2d 661, 671, 46 P.3d 893 (2006). The burden is on the moving party to show an absence of an issue of material fact. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the moving party submits adequate affidavits to meet its burden, the burden shifts to the nonmoving party to set forth specific facts to rebut the moving party's contentions and show that a genuine issue exists. *Seven Gables Corp. v. MGM/US Entm't Co.*, 106 Wn. 2d 1, 13, 721 P.2d 1 (1986).

##### **B. THERE ARE GENUINE ISSUES OF FACT REGARDING THE EXISTENCE AND EFFECT OF TWO RECORDED EASEMENTS**

Despite the fact that Woodland's Answer expressly asserted the right to use two recorded easements located in the Power Line ROW (and attached a survey showing the location of the same), there is no mention of the easements in the City's motion. The City ignored its burden as the

moving party—particularly since it was asking the trial court to order Woodland to “stop...using and occupying the City’s property”. CP 45.

In opposition to the motion, Woodland submitted the declaration of George Webb which described each easement, including recording numbers and attached a sketch showing the location and use of the 40’ easement as the primary driveway access. CP 123, Appendix 1 (CP 133). The existence of this fundamental question of fact should have prevented summary judgment.

The City’s rebuttal brief is silent on the issue and did not even attempt to rebut Woodland’s right to use the 20’ and 40’ recorded easements. Oddly, the City attached a declaration to its rebuttal brief which *purports* to address the easements but is not mentioned in the City’s brief. CP 177 (Declaration of David Barber). But that declaration proves nothing.

Barber, manager of real estate for City Light, implies that Woodland’s two recorded easements should not exist because “to my knowledge...[the City]...has never granted, executed, or recorded a permanent easement across the Subject Property”. CP 178. But this is, at best, a self-serving surmise. The City does not support, much less even mention, how it can possibly be awarded summary judgment which

terminates Woodland's easement rights. Indeed, the City never even made a claim for quiet title.

**C. THERE IS A GENUINE ISSUE OF MATERIAL FACT REGARDING AGENCY AUTHORITY**

The issue of lack of authority by Craig Dwyer was front and center in this case—having been expressly set out in Woodland's Answer. CP 35. Under Washington law, whether agency authority exists is a question of fact. *Smith v. Hansen*, 63 Wn. App. 355, 362, 818 P.2d 1127 (1991) (“whether apparent authority exists in a particular case is a question of fact”). In its motion for summary judgment, the City did not even attempt to meet its burden to show the absence of an issue of material fact regarding agency authority. Instead, the sole declaration in support of the motion only broadly states that “*defendant* executed a Temporary Permit”. CP 55. There is no mention of Craig Dwyer.

Woodland's opposition showed that (1) Mr. Dwyer was not a member of Woodland, (2) he was not the manager of Woodland which is managed by Stratford Development Company, and (3) Dwyer was not authorized to sign the Permit. CP 123. On this basis, alone, summary judgment should have been denied.

The City improperly attempted to address the authority issue for the first time in its rebuttal material. This fails for two reasons. First, the moving party must meet its burden in its motion—not its rebuttal. CR 56; *Young v. Key Pharm*, supra (the burden is on the moving party to show an absence of an issue of material fact). Further allowing “the moving party to raise new issues in its rebuttal materials is improper because the nonmoving party has no opportunity to respond”. *White v. Kent Med. Ctr., Inc.* PS, 61 Wn. App. 163, 168, 810 P.2d 4 (1991).

Moreover, the rebuttal material does not show the absence of a material fact. In rebuttal, the City relies upon the *Supplemental Declaration of Aramaki* which is limited to the following statement:

7. In 2008, Mr. Craig Dwyer, Defendant’s “Vice President for Residential Property Development” applied for a permit from Seattle City Light for Defendant to use the Subject Property for access, parking, and landscaping. In 2007, Defendant granted Comcast a permanent easement to use, occupy and access Defendant Woodland Pointe Apartments property for its communication facilities and equipment. The [Comcast] easement was executed by Mr. Craig Dwyer for Defendant as Grantor. True and correct copies of the permit application, letter to the City requesting permit, and Comcast Easement are attached as Exhibit G.

CP 190. There is no evidence that Dwyer was “defendant’s vice-president” nor do the rebuttal documents show the absence of material fact.

Whether authority exists depends on whether there are objective manifestations by the principal. The law of agency authority is well established and is summarized in *Smith*, supra, as follows:

**Both actual and apparent authority depend upon objective manifestations.** Restatement (Second) of Agency §7, comment b, at 29 (1958) (hereinafter Restatement) (actual authority); Restatement §26, comments a-f, at 101-03 (same); Restatement §8, comment a, at 30-31; Restatement §27, comments a-f, at 103-06 (apparent authority); *Barnes v. Treece*, 15 Wash. App. at 442, 549 P.2d 1152 (apparent authority). **The objective manifestations must be those of the principal.** *Schoonover v. Carpet World, Inc.*, 91 Wash. 2d 173, 178, 588 P.2d 729 (1978); *Lamb v. General Associates, Inc.*, 60 Wash.2d 623, 627, 374 P.2d 677 (1962) (apparent authority); *Lumber Mart. Co. v. Buchanan*, 69 Wash. 2d 658, 661, 419 P.2d 1002 (1966) (actual authority); *Bill McCurley Chevrolet, Inc. v. Rutz*, 61 Wash. App. at 57, 808 P.2d 1167; *Mauch v. Kissling*, 56 Wash. App. 312, 783 P.2d 601 (apparent authority). **With actual authority, the principal's objective manifestations are made to the agent; with apparent authority, they are made to a third person.** *Barnes*, 15 Wash. App. at 442, 549 P.2d 1152 (apparent authority). Restatement §8 & comment a; §27 & comment a. **An agent's exercise of either type of authority results in the principal's being bound.** *Petersen v. Pacific Am. Fisheries*, 108 Wash. 63, 68, 183 P. 79, 8 ALR 198 (1919)

*Smith v. Hansen*, 63 Wn. App. 363 (1991). [Emphasis added]

There is no evidence that Woodland (145<sup>th</sup> and Linden Ave LLC) authorized Dwyer to sign the Temporary Permit. As such, the only issue is apparent authority. The City's rebuttal brief asserts that "the City was led to reasonably believe and assume that Mr. Dwyer had the authority to execute the Permit and bind Defendant". But this

requires a showing of objective manifestations made by the principal (Woodland) to the third person (City).

There is no such manifestation of any authority here. The first rebuttal exhibit (letter of March 19, 2008) is not on Woodland's letterhead or the letterhead of its manager (Stratford Development Company) and otherwise contains no manifestation by Woodland of Dwyer's authority. See CP 240.

Similarly, the second rebuttal exhibit ("Property Usage--Consent Application Form") contains no manifestation of authority by Woodland. See CP 241. Moreover, to the extent the second rebuttal exhibit has *any* relevance, it undermines the City's assertion that it is the "fee owner" of the power line ROW and not merely the holder of an easement. City Light's "Consent Application Form" refers to the power line strip as an "easement right of way". The first page of the form states in part:

**To be used when Seattle City Light has easement rights and is not the property owner. There is no application or rental fees. Allowed uses are similar to permits**

...

**I hereby apply for City Light consent to use the portion of Seattle City Light easement right of way on the next page for the following purpose(s)\_\_\_\_\_**

CP 241, Appendix 2. Clearly, as discussed in the next section, whether the City has an easement or fee simple title is a question of fact.

The third rebuttal exhibit is wholly immaterial to the issue of agency authority. It is a standard “cable service easement issued to Comcast and apparently located by the City in a search of public records in the course of preparing a rebuttal. See CP 243. The Comcast easement is not a manifestation by Woodland *to the City* and there is no evidence the City was even aware of the Comcast document. See *Smith at 365* (“Obviously, manifestations must be communicated to the claimant before they can have...effect”).

Plainly, Mr. Dwyer’s authority to sign the Temporary Permit is a disputed issue of material fact.

**D. THERE ARE GENUINE ISSUES OF MATERIAL FACT REGARDING THE CITY’S ASSERTION OF FEE SIMPLE OWNERSHIP OF THE POWER LINE ROW**

In its Motion, the City asserts that it “has owned the property in fee simple since 1951”. CP 45. In support, it submitted a copy of the King County Assessors taxpayer summary (CP 58) and April 2013 Title Commitment. CP 61. Woodland’s response showed that the City had not met its burden of showing that it owned anything more than an easement to the power line ROW. CP 118.

First, the 1951 deed refers only to a transmission line “right of way”. CP 143, 207. Second, the Assessor’s “parcel data” proves nothing—it only indicates that the Assessor lists the City as an exempt taxpayer. Third, the

“Title Commitment” (issued April 9, 2013) is only an offer to sell insurance and proves nothing.

As a matter of black letter law, a title commitment is a not a representation as to the condition of title. See RCW 48.29.010(3)(c) (Title insurance) which states, in part:

“Preliminary report”, “commitment”...means reports furnished in connection with an application for title insurance and are offers to issue a title policy.....the reports are not abstracts of title...**the report is not a representation as to the condition of the title to real property, but is a statement of terms and conditions upon which the insurer is willing to issue its policy, if the offer is accepted.**

See also *Barstad v. Stewart Title Guar. Co.*, 145 Wn.2d 528, 536, 39 P.3d 984 (2002) (“Significantly, the Legislature clearly established that a preliminary commitment is *not* a representation of the condition of title...”). The City did not meet its burden of showing an absence of a material issue of fact.

Again, the City improperly attempted to meet its burden by new evidence on rebuttal—which also fails. The City’s rebuttal on this issue consisted of two attachments to the Supplemental Aramaki Declaration: (1) a 1943 quit claim deed of the subject strip to Puget Sound Power and Light Company (Puget Power) and (2) a title policy issued to Puget Power in 1943 insuring against any loss up to \$200. CP 193, 196. But this only proves that Puget Power’s 1943 title policy will pay *Puget Power* \$200 if

Puget Power sustains any loss. See RCW 48.29.010(3)(a). “Title policy” means any written instrument, contract, or guarantee by means of which title insurance liability is assumed”.

Moreover, the deed from Puget Power to the City expressly describes the transfer as a “right of way”. CP 143, 207. See *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Line Association*, 156 Wn. 2d. 253, 265, 126 P.3d 16 (2006) (“[W]here the deed uses the term ‘right of way’ as a limitation or to specify the purpose of the grant, such a granted generally conveys only an easement”). Like the former Seattle Interurban Railway in the case at bar, *Yakima Interurban* concerned a small rail line. In quieting title to an easement the court stated:

While the use of the term ‘right of way’ in the granting clause is not solely determinative of the estate conveyed, it remains highly relevant, especially given the fact that it is used to define the purpose of the grant. ...We thus affirm the Court of Appeals decision that Yakima Interurban possesses an easement interest in the right of way.

*Id* at 271. Clearly, for purposes of summary judgment, City Light did not show that it owns the ROW in fee simple.

Finally, the City’s “Property Usage” form (which it submitted in rebuttal) states on its face “**To be used when Seattle City Light has easement rights and is not the property owner. There are no rental**

fees". See Appendix 2 (CP 241). Plainly, the City has its own doubts about whether the ROW is an easement or is owned in fee simple.

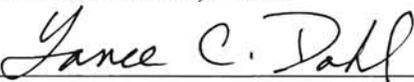
The City has failed to meet its burden of showing that it is the fee simple owner. If it is actually the fee simple owner of the power line ROW, it could have easily submitted a declaration by a qualified person to that effect--but it simply failed to do so.

## V. CONCLUSION

It was error to grant summary judgment in view of the fundamental and genuine issues of material fact. Unless reversed, the trial court's judgment will also have the erroneous effect of quieting title and terminating valid recorded easement rights without a quiet title claim having been alleged or proven.

DATED this 26 day of August, 2013.

LANCE C. DAHL, PLLC

by   
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# **APPENDIX 1**

7710050829

POR. OF N. 1/2 OF N.W. 1/4 OF N.E. 1/4 OF N.W. 1/4 OF SEC. 19, T. 26 N., R. 4 E.

Centerline  
LINDEN

Land Surveyor's Certificate:

This short plat correctly represents a survey made by me or under my direction in conformity with the requirements of appropriate state and county statute and ordinance.

6/6/77  
Date  
A. J. [Signature]

N. 145TH ST.  
S 88° 51' 20" E

← 90' →

30'

30'

45'

50.00

40'

# 3926129

(30' x 50')

# 710050829

(44' x 50')

LINDEN AVE. N.  
50' 39' 33" W

EASING

R = 138.14'

R = 271.00'

R = 151.02'

PARCEL "A"

PARCEL "B"

PARCEL "C"

PARCEL "D"

N 0° 37' 44" E

N 88° 51' 44" W

N 0° 37' 08" E

S 88° 51' 44" E

588° 51' 44" E

N 88° 51' 44" W

N 88° 51' 44" W

43'

150.05'

96'

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## **APPENDIX 2**

SEATTLE.GOV City Services Departments Staff Directory About Seattle City Contacts



SEARCH:

**Seattle City Light**  
*Lighting Seattle Since 1905*

Search SCL

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# Property usage

## Consent Application Form

To be used when Seattle City Light has easement rights and is not the property owner. There are no application or rental fees. Allowed uses are similar to permits.

To apply please print out, complete and mail the form below to:

Seattle City Light  
 Real Estate Services  
 700 5th Avenue, Suite 3300  
 Seattle, WA 98104

## CONSENT APPLICATION

No. \_\_\_\_\_

(200\_\_)

### APPLICANT

Name CRAIG DWYER Phone No. 206.276.7417  
 Company 145th & Linden Ave LLC  
 Address 1605 Bellevue Ave #406 State WA ZIP 98122  
Seattle

I hereby apply for City Light consent to use the portion of Seattle City Light easement right of way as illustrated on the next page for the following Purpose(s):

for access to the apartment community

@ 14539 - 145th Ave NE and to extend the Seattle City Light Temp. Permit P.M. #260419-2-403, that was further extended by June Jacobson on 7/19/2000 (see attached).

LEGAL DESCRIPTION OF CONSENT AREA: Lots A, B, C, & D, city of Seattle short plat #77-59, according to the short plat recorded under recording #7710050829, records of King Co, WA

Located In Section 19, Township 26 N, Range 4 E, W.M.

VICINITY MAP AND LOCATION OF PROPOSED CONSENT AREA Scale see attached

(Please show streets, buildings, fences, or other features which relate to your request. If your plans include fencing on the right-of-way, specify type-weed, metal or combination. Show all improvements you propose for the right-of-way, including underground utilities, drainage facilities, etc.)

FOR CITY LIGHT USE ONLY:

APPROVALS:

Engineering \_\_\_\_\_ Others \_\_\_\_\_

Distribution \_\_\_\_\_

Property Agent (x3394): \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VICINITY MAP AND LOCATION OF PROPOSED CONSENT AREA Scale \_\_\_\_\_

(Please show streets, buildings, fences, or other features which relate to your request. If your plans include fencing on the right-of-way, specify type-weed, metal or combination. Show all improvements you propose for the right-of-way, including underground utilities, drainage facilities, etc.)

For information about these applications and City Light property policies, or questions about City Light properties, please call Seattle City Light Real Estate Services, at 684-3394.

Property Usage Site Directory

The Seattle City Light Web Team: WEBTeam.SCL@seattle.gov  
Seattle City Light - 700 5th Avenue, Suite 3200, Seattle, WA 98104-5031 - 206.684.3000  
Mailing address: 700 5th Avenue, Suite 3200, P.O. Box 34023 Seattle, WA 98124-4023  
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Residential Services | Business Services | New Construction Resources | Kids Exploring Energy

**CERTIFICATE OF SERVICE**

I, Daena Temkova, legal assistant to Lance C. Dahl, hereby certify that on the date set forth below I caused a copy of the within BRIEF OF APPELLANT to be hand delivered to counsel of record for the Respondent at the following address:

Stephen Karbowski  
Seattle City Attorney  
600 Fourth Avenue, 4<sup>th</sup> Floor  
P.O. Box 94769  
Seattle, WA 98124-4769  
(206) 684-8200

DATED this 26<sup>th</sup> day of August, 2013.

  
\_\_\_\_\_  
Daena Temkova

2013 AUG 26 PM 12:12  
COURT OF APPEALS  
STATE OF WASHINGTON