

No. 72345-6-I

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

SATWANT SINGH and DHALIWAL REAL ESTATE, LLC,

Appellants,

v.

COVINGTON WATER DISTRICT, A Washington Municipal Agency,

Respondent.

RESPONSE BRIEF OF APPELLANTS

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And Dhaliwal Real Estate, LLC:

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STATE OF WASHINGTON
COURT OF APPEALS DIVISION I

ORIGINAL

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I. RESPONSE

Appellants, Satwant Singh and Dhaliwal Real Estate, LLC, provide the following response to Respondents Brief.

a. SE Wax Road Project

To provide a little clarification, Respondent argues that the SE Wax Road Project was undertaken in part because of Appellants development (see pages 3-4 of Respondent's Brief). The S.E. Wax Road Project had been in the process since 2002, before Appellants approached Respondent (CP 192). This project was not undertaken by Respondent because of Appellants as Respondent's likes to imply in its brief. The fact of the matter is that when Appellants approached Respondent about connecting in 2005, at that time, water was available as established by the Water Availability Certificate.

How this is relevant is that Respondent would like the Court to believe that policy required the connection charges to be non-refundable because the SE Wax Road Project was completed specifically for Appellants, among other actions. This is misleading because that project was not necessary to provide water to Appellants development. Nothing in the record shows that Respondent required Appellant to delay its' development until after this project was complete. To the contrary, in 2005 water was available and the SE Wax Road project was not completed until

2010.

Respondent is trying to create a picture that all these funds were expended because of Appellants' development. This is misleading as no funds were ever expended except those funds reimbursed through the "Developer Receivable Account" (CP 202).

b. Connection Charges/Policy

Appellants do not dispute that Respondent has a right to charge connection charges. It is not disputed that the connection charge is to include a pro rata share of costs of existing facilities per RCW 57.08.005 (11) (see page 17 of Respondent's Brief). There is no problem that when one receives from the system, they should pay. The problem is that no actual connection occurred!

As argued in the Appellants brief (see pages 7-10), the funds were not used for the authority granted by statute, actual connection. Instead Appellants used the funds for capital improvements (CP 180 lines 4-10). The question is should someone pay for capital improvements for which no benefit is received? The answer still remains no (see Appellants brief "Fee/Tax" page 14).

As for policy purposes (page 22 of Respondent's Brief), it is understood that protection is necessary to ensure completion of the project. In this case no work started requiring completion or

connection. This is confirmed in the Declaration of Brian Borgstadt for Respondent. He confirmed that that a new developer is involved and starting a development. The new developer has to do all the work that Appellants would have and will pay a connection charge (CP 57, #23).

Respondent points out that a performance bond could have been required (Respondent's Brief page 24) but that is not relevant as too many factors apply. For example, would a performance bond require completion of a project that never started? This argument by Appellant should be ignored.

All of the arguments of Respondent are simply to receive a nice financial windfall of \$74,800.00.

c. RCW 57 – Powers and Authority

The questions surrounding powers of district really comes down to what limit is in place if any? Respondent's position is that it has the authority to put any conditions it wants to for a property owner to connect. However, when a District has sole control of water distribution in that area, should it be able to add any conditions it wants because it has policies that say so? The answer is simply no.

Respondent argues that it has proprietary authority to act as a "private individual" and was acting as such at the time (see page 28 of Respondent's Brief). This is incorrect. Proprietary would

indicate that other options are available. If one does not like the price of a car at one dealership, they are free to go to another dealership. In this case, Appellants had no right to go down the street to the nearest water district and ask to connect. Respondent has exclusive monopolistic control over the water distributed to Appellants' property. It had no choice but to accept the terms of Respondent if it wanted to connect (see "Duty to Serve/Monopoly/Proprietary" page 11 of Appellants' Brief)

II. CONCLUSION

The question really comes down to whether a district has authority to make a connection charge non-refundable or not, especially if connection never occurs? Based on the arguments of Appellants' Brief and this Response, the answer is no. If work had commenced requiring Respondent to complete the project, then the answer could switch to yes. That is not the case here though.

In light of the foregoing, Appellants request that this Court reverse the dismissal and reinstate this case against Respondents subject to its ruling herein.

DATED this 22nd day of January, 2015.

HANIS IRVINE PROTHERO, PLLC



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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2015, copies of the following document:

1. Appellants' Response Brief.

was served on counsel at the following address via first class mail and email:

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

DATED this 22nd day of January, 2015, at Kent, Washington.



Brian J. Hanis