

FILED
COURT OF APPEALS
DIVISION II

NO. 37077-8-II

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COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
BY 
DEPUTY

John A. Salinas and Judy E. Salinas,

Appellant,

vs.

James Lindsay,

Respondent.

RESPONDENT'S BRIEF

Mark A. Rowley, WSBA #7555
GARVEY SCHUBERT BARER
Attorneys for Respondent

Eighteenth Floor
1191 Second Avenue
Seattle, Washington 98101-2939
(206) 464-3939

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I. STATEMENT OF CASE

A. Procedural History.

Respondent James Lindsay (“Lindsay”) filed suit on May 19, 2000 alleging that appellant John Salinas and Judy Salinas (“Salinas”) had constructed a concrete wall and elevated concrete walkway within a 12 foot easement. CP 58-62. Salinas answered on June 21, 2000, denying any encroachment within the easement and asserting the sole affirmative defense that Lindsay had consented to the construction of the improvements in the proximity of the easement. CP 63-66.

After a three day trial to the bench on September 14, 15, and 16, 2005, the Hon. Leonard Kruse, Pro Tem, issued a memorandum opinion on September 21, 2005 rejecting Salinas’s argument of the consent by Lindsay to the wall and requiring the removal of the reinforced concrete wall and related attachments within 180 days. CP 26-27

On September 21, 2007, Lindsay provided notice to Salinas of the presentation of findings of fact, conclusions of law, and judgment. CP 67-80. The hearing was continued to November 2, 2007. No objections to the proposed findings of fact, conclusions of law, judgment were filed. The findings of fact, conclusions of law, and judgment, as proposed, were entered by Judge Kruse. CP 31-37, App. 1 The judgment requires removal of the wall and related attachments within 180 days from the date

of entry or by May 1, 2008.

Salinas filed a notice of appeal on November 30, 2007. CP 38-46. The scope the appeal stated in the notice is limited to the review of Findings of Fact Nos. 12, 14, 15 and Conclusions of Law Nos. 20 and 21.¹

On January 3, 2008, the court clerk provided notice to Salinas of his failure to file a designation of clerk's papers and statement of arrangements by December 31, 2007. On January 24, 2008, this Court entered a Conditional Ruling of Dismissal for the failure of Salinas to file a statement of arrangements by January 18, 2008. On February 1, 2008, Salinas filed a statement of arrangements that stated that Salinas did not intend to file a verbatim report of proceedings. Contrary to RAP 9.2(c), the statement of arrangement contained no statement of issues that Salinas intended to present on review. Salinas has not filed any other report of proceedings of the trial. On March 10, 2008, the court clerk provided notice to Salinas of his failure to file his appellant's brief that was due on March 3, 2008. Salinas filed his brief on March 31, 2008.

B. Facts.

Lindsay and Salinas are the owners of adjoining lots that were respectively Lot D and Lot C of the Barbara Anderson Short Plat, recorded April 21, 1994. FF 1, 2. Ex. 6 A copy of the relevant portion of

¹ Lindsay filed notice of a cross-appeal. CP 47-50. Lindsay has elected to abandon his cross appeal.

the short plat is attached to this brief as Appendix 2.²

The Anderson Short Plat shows a 12 foot driveway easement which straddles the boundary line between Lots D and C. Seven feet of the easement is located on Lindsay's lot and 5 feet of the easement is located on Salinas' lot. FF 4 Salinas acquired his lot shortly after the Anderson Short Plat was filed. Before the purchase of his lot, Salinas had reviewed the driveway easement that burdened his property. FF 5

At the time of his purchase, Salinas' lot was improved with an existing cabin that Salinas and his family used on weekends in the summer. FF 6 When Lindsay acquired his lot, it was also improved with an existing cabin that was used by Lindsay as a vacation home. FF 7

In the summer of 1998, Salinas demolished his cabin and began the construction of his existing house. In September 1998, Lindsay visited his cabin and saw that a six foot wall parallel to the beach had been constructed at the east end of the driveway easement and that footings had been poured for a continuation of the wall in a westerly direction down the property line. The footings had been installed approximately two-thirds down that portion of the property line which was to the north of the construction of Salinas' new house. FF 8

² The structures depicted on Lots D and C were the pre-existing cabins. Salinas' cabin was removed in connection with the construction of his new house. FF 6 Lindsay's cabin was ordered removed pursuant to the court's judgment. CP 36-37

On October 26, 1998, Lindsay sent Salinas a letter demanding that all construction cease and the encroachments be removed from the driveway easement. FF 9, Ex. 18, App. 3 On April 23, 1999, Lindsay visited his cabin and discovered that construction of the wall and related attachments had been completed by Salinas. FF 10

Exhibit 25 is a survey which depicts Salinas' existing house, the constructed wall, and the related attachments, including a raised concrete walk that connects the wall to the northern side of Salinas' house. FF 11 Copies of the relevant portions of Exhibit 25 is attached to this brief as Appendix 4. The survey shows that the concrete wall is six feet high and eight inches wide and closely approximates that portion of the boundary line between Lots C and D that is directly north of Salinas's house. The wall then angles southerly back to the southern border of the driveway easement and includes, as a part of the wall, a sliding gate. The survey also shows the existing gravel driveway. The first three pictures of Exhibit 26 (attached as Appendix 5) show the concrete wall and elevated walkway adjoining Salinas' house to the north, a view of wall looking westerly along the gravel driveway, and a picture of that portion of the wall with the sliding gate.

II. ARGUMENT

A. Salinas' Appeal Should Be Dismissed Because of the Failure of Salinas to Provide a Sufficient Record on Appeal and for the Unsupported Factual Statements in Salinas' Brief

Salinas' appeal is primarily based on the failure of the trial court to make a finding that Salinas' construction of a concrete wall within the driveway easement is inconsistent with Lindsay's use of the easement, together with Salinas' factual assertions that Lindsay, in fact, does not need or use that portion of the driveway easement that is blocked by the wall.

Salinas however has not provided a report of proceedings to support his appeal. Salinas nevertheless states without reference to any record that "Lindsay's access from the private road easterly to his cabin, over the 12 ft shared driveway easement was unencumbered at all times" and that "no loss of use, interference or obstruction of an existing or proposed driveway was offered . . ." Salinas Brief, p. 8. Similarly, Salinas states that "Lindsay did not claim or present any evidence that he needed to use the easement area and was unable to, due to the encroachment. In fact, the evidence shows that he did not need to use the area of the easement where the encroachment is." Salinas Brief, p. 11-12. In an attempt to argue that this case is analogous to *Thompson v. Smith*, 59

Wn.2d 397, 367 P.2d 798 (1962), Salinas states, again without support, that the “wall is removable without substantial cost.” Salinas Brief, 13

Salinas also argues that the trial court did not properly apply equitable principals in requiring the removal of the wall and related attachments. Without support to any record, Salinas states that Lindsay “has shown no current need to use the easement and the benefit of removing the wall is equally small as the area where the wall encroaches is not suitable for a driveway due to its proximity to the dwelling bulkhead and shoreline.” Salinas Brief, p. 15 Salinas also asserts that “future use of the area is not limited by placement of the wall in that area and it is impractical to take down the wall. Salinas Brief, p. 15

As the appellant, Salinas had the burden of providing an adequate record on appeal. *Story v. Shelter Bay*, 52 Wn. App. 334, 345, 760 P.2d 368 (1988) Pursuant to RAP 9.10, the Court may dismiss an appeal if an appellant does not make a good faith effort to provide a sufficient record on appeal. In *Seattle v. Torkar*, 25 Wn. App. 476, 610 P.2d 379 (1980), the Court dismissed an appeal of a *pro se* appellant because of the absence of clerk’s papers and verbatim report of proceedings after the Court had repeatedly advised the appellant of the deficiencies in the record. In the instant case, Salinas is represented by counsel but has nevertheless failed to provide a sufficient record. Salinas has compounded his error by

belatedly filing a brief which is replete with unsupported factual assertions. Salinas' appeal should be dismissed.

B. Salinas' Argument that His Wall Is Not Inconsistent with Lindsay's Use of the Easement Was Not Pled As An Affirmative Defense

In his answer to Lindsay's complaint, Salinas denied that his concrete wall had been constructed within the driveway and also asserted the affirmative defense of Lindsay's consent to the wall. CP 63-66 Salinas' argument now on appeal is that the location of the wall within the easement is not disputed (Salinas Brief, p. 7) but that the wall is not inconsistent with Lindsay's use of the easement. That argument however is in the nature of an affirmative defense under CR 8(c) which was not pled by Salinas. This Court should accordingly not consider the same. *Heath v. Uraga*, 106 Wn. App. 506, 516, 24 P.3d 413, 419 (2001); RAP 2.5(a)

C. Salinas' Concrete Wall is Inconsistent with Lindsay's Use of the Easement.

Even though the trial court did not specifically make a finding of fact that the concrete wall is inconsistent with Lindsay's use of the easement, this Court can review the limited record on appeal and easily make that determination. *In re LaBelle*, 107 Wn.2d 196, 218-219, 728 P.2d 138 (1986)(although findings of fact were inadequate, record supported conclusions). In addition, findings of fact are given a liberal

construction where, as in the instant case, no exceptions to the findings were made by appellant. *Id.*

Salinas relies heavily on *Thompson v. Smith*, 59 Wn.2d 397, 367 P.2d 798 (1962). That case however is clearly distinguishable. In *Thompson*, a gravel access road servicing two properties had for some reason not been properly located within a reserved 20 foot easement. The reserved easement had become overgrown with brush and small trees. Smith had installed a concrete slab that was partially within the easement area and which was used for parking. There was no evidence that the parties had ever used the 20 foot easement for access instead of the existing gravel road.

The court held that a prescriptive easement for access had been established over the existing gravel road. The court also found that the “concrete slab did not interfere with the use of the eight foot traveled road at this time, but would if it were to be widened. Whatever may be the proceeding to widen an eight foot easement acquired by prescription or agreement, the removal of the concrete slab will have to await that event.” *Thompson*, supra at 407. The court noted that the expansion of the road within the reserved easement may not require the removal of the slab if the grade of the new road was such that the slab would only need to be covered. The court accordingly concluded that the slab did not now have

to be removed because “the owner of property has the right to use his land for purposes not inconsistent with its ultimate use for the reserved purpose during the period of nonuse.” *Id.*, at 407 The court held however that a structure that could not be removed without substantial cost could not in any event be permitted within such an easement unless there was some guarantee it would be removed if necessary.

In the instant case, the driveway easement is not overgrown with brush and small trees. It is apparent from the second and third pictures of Exhibit 26, App. 5, that there is in fact an existing gravel driveway next to Salinas’ concrete wall. The survey also shows the location of an existing gravel driveway. Ex. 25, App. 4 Moreover, the encroachment in this case is not just a concrete slab which may not even need to be removed in order to enjoy access but, as the first picture of Exhibit 26 demonstrates, is a massive concrete wall and walkway which effectively excludes Lindsay from 5 feet of the 12 feet width of the eastern easement area. The total obstruction by Salinas of almost one half of the easement area by a concrete wall and walkway is clearly “inconsistent with [the driveway’s] ultimate use” for access.

D. There was No Abuse of Discretion by the Trial Court in Requiring the Removal of the Encroachments.

Salinas argues that the trial court erroneously issued an injunction requiring the removal of his encroachments without considering the five elements listed in *Arnold v. Melani*, 75 Wn.2d 143, 449 P.2d 800 (1968).

A trial court's decision to grant an injunction is reviewed for abuse of discretion. *Washington Fed'n of State Employees v. State*, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). A trial court necessarily abuses its discretion if the decision is based upon untenable grounds, or the decision is manifestly unreasonable or arbitrary. *Kucera v. State, Dept. of Transportation*, 140 Wn.2d 200, 209, 995 P.2d 63, 68 (2000)

As the court in *Arnold* recognized, ordinarily a mandatory injunction will issue to compel the removal of an encroaching structure. Accordingly to avoid the issuance of an injunction, affirmative evidence of the five elements must “be clearly and convincingly shown by the encroacher.” *Arnold, supra* at 152

None of the five elements in *Arnold* are supported by any evidence in the record. In contrast, the available record on appeal not only fails to establish any of the five elements but affirmatively shows that there was no abuse of discretion by the trial court.

First, this is not the case where the corner of a house encroaches a few inches over a property line. Rather, this case involves the

construction of a massive concrete wall and elevated walkway which totally obstructs the five feet of access easement that is located on the eastern portion of Salinas' property.

The doctrine of balancing the equities provides that where, by mistake, a building is erected that slightly encroaches, and the damage to the owner of the building is greatly disproportionate to the injury sustained by the landowner, the court may decline to order its removal and leave the complaining party to his remedy at law. The cases where this doctrine is applied deal with instances where a cornice projects a few inches on another's land, or the wall of a great building encroaches a few inches. No Washington case can be found in support of the doctrine. In Tyree v. Gosa, 11 Wn. 2d 572, 119 P.2d 926 (1941), the court was asked to balance the equities. We said:

"It is very difficult to see how one can get an equity in the land of another by merely building upon it, however innocently. . . ."

Adamec v. McCray, 63 Wn.2d 217, 219-220, 386 P.2d 427 (1963)

Secondly, the doctrine of balancing the equities is "reserved for the innocent defendant who proceeds without knowledge or warning that his activity encroaches upon another's property rights. *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 699-700, 974 P.2d 836 (1999); *Accord, Bach v. Sarich*, 74 Wn.2d 575, 582, 445 P.2d 648 (1968)

In *Mahon v. Haas*, 2 Wn. App. 560, 564-565, 468 P.2d 713 (1970), the Court of Appeals affirmed the trial court's grant of an injunction requiring the removal of a greenhouse which had been constructed in a prescriptive access easement. Counsel for the owner of the dominant

estate had sent the owner of the servient estate a letter warning that the greenhouse would interfere with his client's rights of access. The Court rejected any balancing of the equities:

When plaintiff erected the greenhouse after receiving the warning letter from defendants' attorney before building the greenhouse, she was either taking a calculated risk, or acting with indifference to the consequences. We find no error in the trial court's choice of remedy.

Similarly, in the instant case, the construction of the wall was not the result of inadvertence or mistake. Salinas had reviewed the driveway easement before he had constructed his wall. FF 5. After he had constructed the footings for the wall, Lindsay had sent Salinas a letter demanding that he cease further construction and remove the encroachments. FF 8, 9. Ex., App. 3 Salinas nevertheless completed the wall and related attachments. FF 10.

E. This Court Should Award Attorneys' Fees to Lindsay Pursuant to RAP 18.9(a).

Salinas's appeal is frivolous, presents no debatable issues for review and was filed for the sole purpose of delay. Moreover, Salinas has failed to comply with the appellate rules. Salinas has not only failed to file an adequate record on appeal, Salinas has egregiously supported his arguments with factual assertions that are totally unsupported by the record.

This Court should sanction Salinas under RAP 18.9(a) and award

Lindsay his attorneys' fees incurred in the defense of this appeal.

III. CONCLUSION

This Court should dismiss Salinas' appeal for failure of Salinas to provide a sufficient record on appeal. Alternatively, this Court should affirm the trial court judgment. Lindsay should in either event be awarded his attorney's fees on appeal.

DATED this 15th day of May, 2008.

GARVEY SCHUBERT BARER

By 
Mark A. Rowley, WSBA #7555
Attorneys for Respondent James Lindsay

APP. 1; CP 31-37

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IN OPEN COURT
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DAVID W. PETERSON
KITSAP COUNTY CLERK

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF KITSAP

10 James Lindsay, a single person,

11 Plaintiff,

12 vs.

13 John A. Salinas and Judy E. Salinas, husband
and wife,

14 Defendants.

NO. 00-2-01558-7

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

15
16 This matter having been tried to the bench on September 12, 13 and 14, 2005 the Court hereby
17 makes the following:

18 **FINDINGS OF FACT**

- 19 1. Plaintiff James Lindsay ("Lindsay") is the owner of Lot D of the Barbara Anderson Short
20 Plat, recorded under Kitsap County Auditor's No. 9404210269 (the "Anderson Short Plat")(Exhibit 6).
21 2. Defendants John Salinas and Judy Salinas (collectively, "Salinas") are the owners of the
22 Lot C of the Anderson Short Plat.
23 3. Lots D and C are subject to the Protective Covenants for the Apple Tree Point Estates
24 recorded under Kitsap County Auditor's No. 9404210258 (the "Protective Covenants")(Exhibit 14).
25
26

1 4. The Anderson Short Plat shows a 12 foot driveway easement which straddles the
2 boundary line between Lots D and C. Seven feet of the easement is located on Lot D and 5 feet of the
3 easement is located on Lot C.

4 5. Salinas acquired his lot shortly after the Anderson Short Plat was filed. Before the
5 purchase of this lot, he had reviewed the driveway easement that burdened his property.

6 6. At the time of his purchase, Salinas' lot was improved with an existing cabin that
7 Salinas and his family used on weekends in the summer.

8 7. When Lindsay acquired his lot, it was also improved with an existing cabin ("Lindsay
9 Cabin") that is used by Lindsay as a vacation home.

10 8. In the summer of 1998, Salinas demolished his cabin and began construction of his
11 existing house. In September 1998, Lindsay visited the Lindsay Cabin and saw that a six foot wall
12 parallel to the beach had been constructed at the east end of the driveway easement and that footings
13 had been poured for a continuation of the wall in a westerly direction down the property line. The
14 footings had been installed approximately two-thirds down that portion of the property line which
15 was to the north of the construction of Salinas' new house.

16 9. On October 26, 1998, Lindsay sent Salinas a letter demanding that all construction
17 cease and the encroachments be removed from the driveway easement. Exhibit 18.

18 10. On April 23, 1999, Lindsay visited the Lindsay Cabin and discovered that construction
19 of the wall and related attachments had been completed by Salinas.

20 11. Trial exhibit 25 is a survey which depicts Salinas' house, the constructed wall and the
21 related attachments. The preparer of the exhibit was not called as a witness. Exhibit 25 was admitted
22 after Salinas acknowledged that the survey was accurate within a foot.

23 12. Lindsay has established by a preponderance of the evidence that the wall and the
24 related attachments encroaches within the driveway easement from a point located on the northeast
25
26

1 corner of the building envelope of the Salinas property, as depicted in Exhibit 25, to a point westerly
2 thereof 152.5 feet along the wall, as depicted in Exhibit 25.

3 13. Lindsay has not established by a preponderance of the evidence that the rest of the
4 wall going further west to its point of termination is encroaching within the driveway easement.

5 14. Salinas claims that he had a conversation with Lindsay where the parties agreed that
6 the wall could encroach 5 feet into the driveway easement from the northeast corner of Salinas'
7 building envelope to a point northerly of the northwest corner of Salinas' newly constructed house.
8 There is no clear, cogent or convincing evidence that the parties had such an agreement.

9 15. The value of the loss of use by Lindsay of the driveway easement because of Salinas'
10 encroachments is \$540 per annum, commencing April 1, 1999.

11 16. Sections 11.6 and 11.13 of the Protective Covenants require lot owners to conform to
12 the requirements of the short plat. Section 10 of the Anderson Short Plat requires all new
13 construction to be located within the building envelopes depicted on the short plat.

14 17. The Lindsay Cabin is outside of the building envelope.

15 18. Section 11.4 of the Protective Covenants requires all cabins that were existing as of
16 the date of the Protective Covenants shall be removed, replaced or upgraded within the time periods
17 described in Section 11.4.

18 19. The time periods described in Section 11.4 have passed. The Lindsay Cabin was not
19 removed, replaced or upgraded within the meaning of Section 11.4.

20 **CONCLUSIONS OF LAW**

21 20. Salinas is required to remove his wall and other improvements that are located within
22 the driveway easement from a point located on the northeast corner of Salinas's building envelope, as
23

1 depicted in Exhibit 25, to a point westerly thereof 152.5 feet along the wall, as depicted in Exhibit 25,
2 within 180 days from the date hereof.

3 21 Lindsay is granted judgment for his loss of use of the driveway easement in the
4 amount of \$540 per annum, commencing April 1, 1999 and continuing until the removal of the
5 encroachments described in paragraph 20.
6

7 22. Lindsay is required to either demolish the Lindsay Cabin, including the existing decks,
8 or relocate the Lindsay Cabin, including the existing decks, to a location within the building envelope
9 within 180 days from the date hereof.

10 23. The evidence did not establish any defense of acquiescence to the enforcement of the
11 Protective Covenants.

12 24. Lindsay claims that Salinas has installed logs, pavers, planting and other items to the
13 east of the construction set back line. The Court finds that what ever occurred in that area was either
14 approved or required by shoreline authorities. The Court however will retain jurisdiction to make
15 such further orders as are necessary to lessen the impact of any such items on the view of Lindsay
16 across that area. Any order of the Court will be subject to the approval of the appropriate shoreline
17 authorities to the extent necessary.
18

19 25. Lindsay also claims that Salinas constructed his house and other improvements outside
20 of the building envelope and otherwise breached Sections 8.3 and 11.10.2 of the Protective
21 Covenants. The Court finds that any such violations are not of such a substantial nature as to warrant
22 equitable relief and no evidence was presented as to monetary damages suffered by Lindsay.
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24 26. The Court will retain jurisdiction of this matter to ensure compliance with paragraphs
25 20, 22, and 24.
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Dated this ___ day of November, 2007.


Judge Leonard W. Kruse, Judge Pro Tem

Presented by:

GARVEY SCHUBERT BARER

By 
Mark A. Rowley, WSBA#7555
Attorneys for Plaintiff James Lindsay

RECEIVED AND FILED
IN OPEN COURT

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DAVID W. PETERSON
KITSAP COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

James Lindsay, a single person,

Plaintiff,

vs.

John A. Salinas and Judy E. Salinas, husband
and wife,

Defendants.

NO. 00-2-01558-7

JUDGMENT

JUDGMENT SUMMARY

1. Judgment Creditor: James Lindsay
2. Attorney for Judgment Creditor: Mark Rowley, Garvey Schubert Barer
3. Judgment Debtor: John A. Salina and Judy E. Salinas
4. Amount of Judgment: \$9,642.76 *W*
5. Interest Rate: 12%

Findings of Fact and Conclusions of Law having been concurrently entered herewith, the Court enters the following judgment:

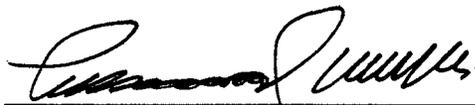
1. Defendants are hereby enjoined to remove the wall and other improvements that are located within the driveway easement from a point located on the northeast corner of Salinas's building envelope, as depicted in Trial Exhibit 25, to a point westerly thereof 152.5 feet along the wall, as depicted in Exhibit 25, within 180 days from the date hereof.

1 2. Plaintiff is hereby granted judgment in the amount of \$540 per annum, commencing
2 April 1, 1999 and continuing until the removal of the encroachments described in paragraph 1 above.

3 3. Plaintiff is hereby enjoined to either demolish or relocate his cabin and decks existing
4 as of the date of the trial in this matter to a location within the building envelope within 180 days
5 from the date hereof.

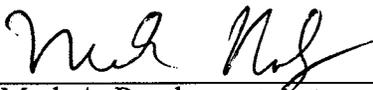
6 4. The Court will retain jurisdiction of this matter to ensure compliance with paragraphs
7 1 and 3 above and to also enter orders in regard to the view rights of plaintiff over defendants'
8 property east of the construction set back line, as further described in the Court's Conclusions of
9 Law.
10

11 Dated this 2 day of November, 2007.

12
13
14 
15 Judge Leonard W. Kruse, Judge Pro Tem

16
17 Presented by:

18 GARVEY SCHUBERT BARER

19
20 By 
21 Mark A. Rowley, WSBA#7555
22 Attorneys for Plaintiff James Lindsay
23
24
25
26

APP. 2; PORTION EX. 6

PORTION OF EXHIBIT 6

1.2 E., W.M.
IN

50 100 150

SCALE IN FEET
1" = 50'

SOUTH LINE OF NORTH
2 ACRES OF GOV'T LOT 3



TIDELANDS
EXCEPTED

PUGET
SOUND

Lindsay Lot
N 24° 39' 24" W
75.84'

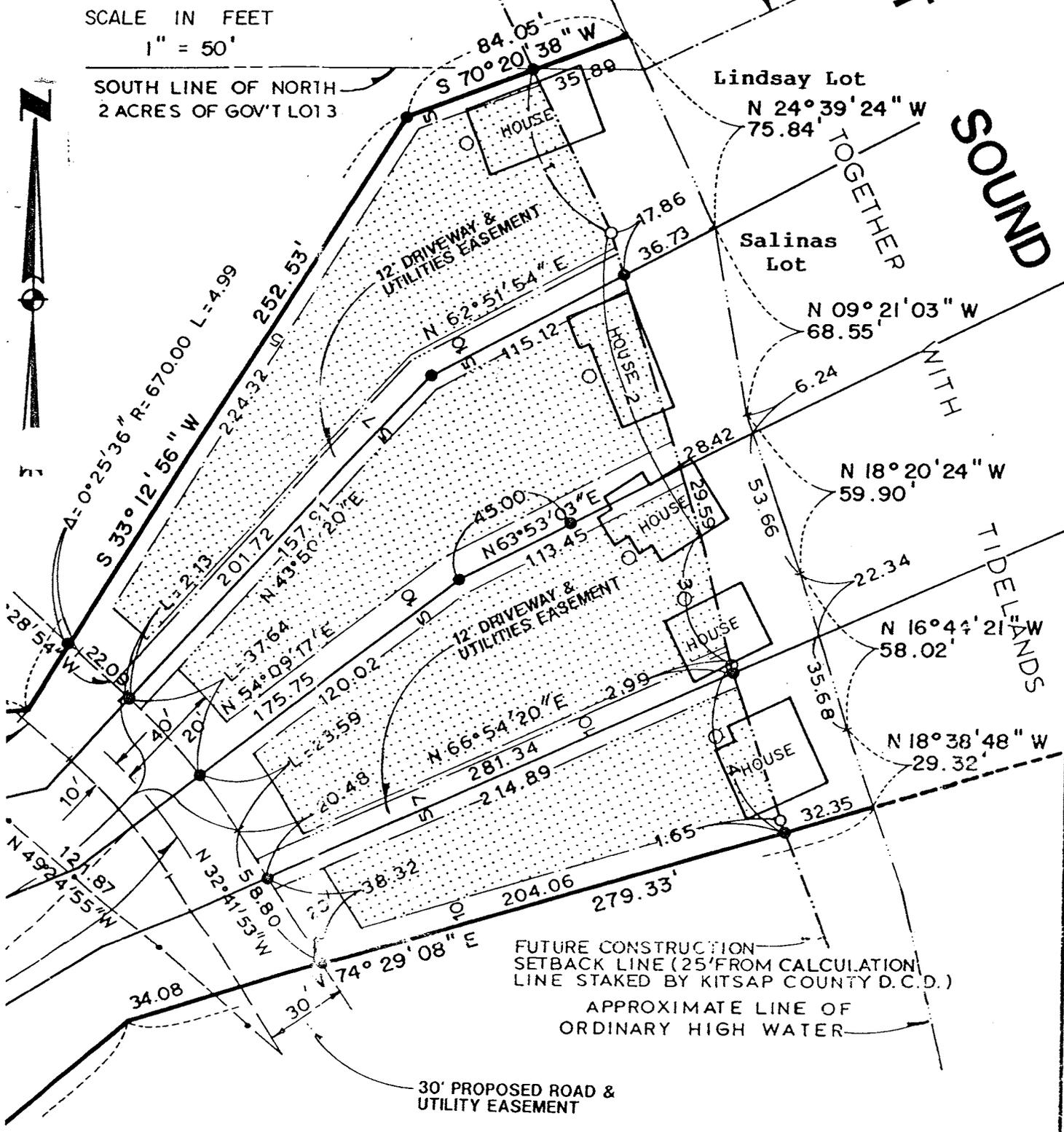
Salinas Lot

N 09° 21' 03" W
68.55'

N 18° 20' 24" W
59.90'

N 16° 44' 21" W
58.02'

N 18° 38' 48" W
29.32'



FUTURE CONSTRUCTION
SETBACK LINE (25' FROM CALCULATION
LINE STAKED BY KITSAP COUNTY D.C.D.)

APPROXIMATE LINE OF
ORDINARY HIGH WATER

30' PROPOSED ROAD &
UTILITY EASEMENT

APP. 3; EXHIBIT 18

EXHIBIT 18

October 26, 1998

John and Judy Salinas
12912 Hwy. 99 S
Everett, WA 98204

Re: Apple Tree Point Property – Road and Utility Easement

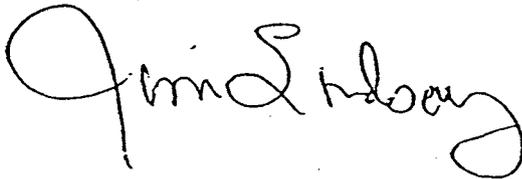
Dear John and Judy,

I regret having to write this letter, however, over the past six weeks I have attempted to initiate a dialog concerning the building activity that has occurred in our joint roadway and utility easement. A copy of our joint easement is attached. Your contractor under the supervision of yourself and your architect have constructed a six foot wall at the East end of the easement and has poured a footing or is planning to construct a six foot wall down the center of the entire easement which is currently our joint driveway.

I request that all building activity of any type in this easement is stopped immediately and all improvements (walls, concrete, etc.) are removed within fifteen days from the date of this letter.

Should you have any questions, please call me at 206-914-7001.

Sincerely,

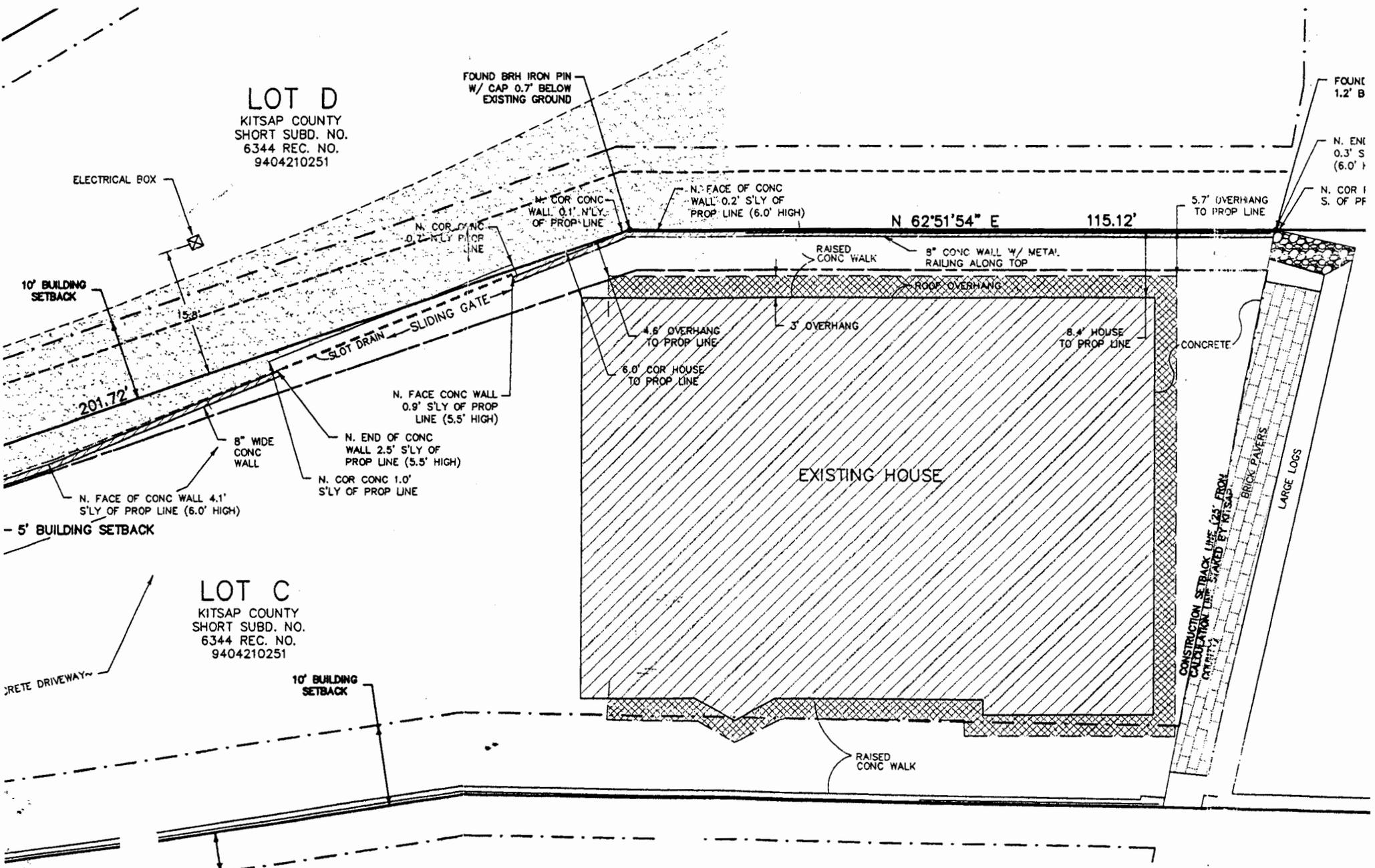
A handwritten signature in cursive script, appearing to read "Jim Lindsay". The signature is written in dark ink and is positioned above the typed name and title.

Jim Lindsay
Property Development Manager

Cc: Jane Koler - Attorney

APP. 4; PORTION EX. 25

PORTION OF EXHIBIT 25



LOT D
 KITSAP COUNTY
 SHORT SUBD. NO.
 6344 REC. NO.
 9404210251

LOT C
 KITSAP COUNTY
 SHORT SUBD. NO.
 6344 REC. NO.
 9404210251

EXISTING HOUSE

N 62°51'54" E 115.12'

FOUND BRH IRON PIN
 W/ CAP 0.7' BELOW
 EXISTING GROUND

FOUND
 1.2' B

N. END
 0.3' S
 (6.0')

N. COR I
 S. OF PF

5.7' OVERHANG
 TO PROP LINE

N. FACE OF CONC
 WALL 0.2' S'LY OF
 PROP LINE (6.0' HIGH)

N. COR CONC
 WALL 0.1' N'LY
 OF PROP LINE

N. COR CONC
 0.7' N'LY PROP
 LINE

RAISED
 CONC WALK
 8" CONC WALL W/ METAL
 RAILING ALONG TOP

ROOF OVERHANG

4.8' OVERHANG
 TO PROP LINE

3' OVERHANG

8.4' HOUSE
 TO PROP LINE

CONCRETE

6.0' COR HOUSE
 TO PROP LINE

N. FACE CONC WALL
 0.9' S'LY OF PROP
 LINE (5.5' HIGH)

N. END OF CONC
 WALL 2.5' S'LY OF
 PROP LINE (5.5' HIGH)

N. COR CONC 1.0'
 S'LY OF PROP LINE

8" WIDE
 CONC
 WALL

N. FACE OF CONC WALL 4.1'
 S'LY OF PROP LINE (6.0' HIGH)

- 5' BUILDING SETBACK

10' BUILDING
 SETBACK

10' BUILDING
 SETBACK

CONCRETE DRIVEWAY

CONSTRUCTION SETBACK LINE 12.5' FROM
 CALCULATION TO BE MADE BY KITSAP
 COUNTY
 BRICK PAVING
 LARGE LOGS

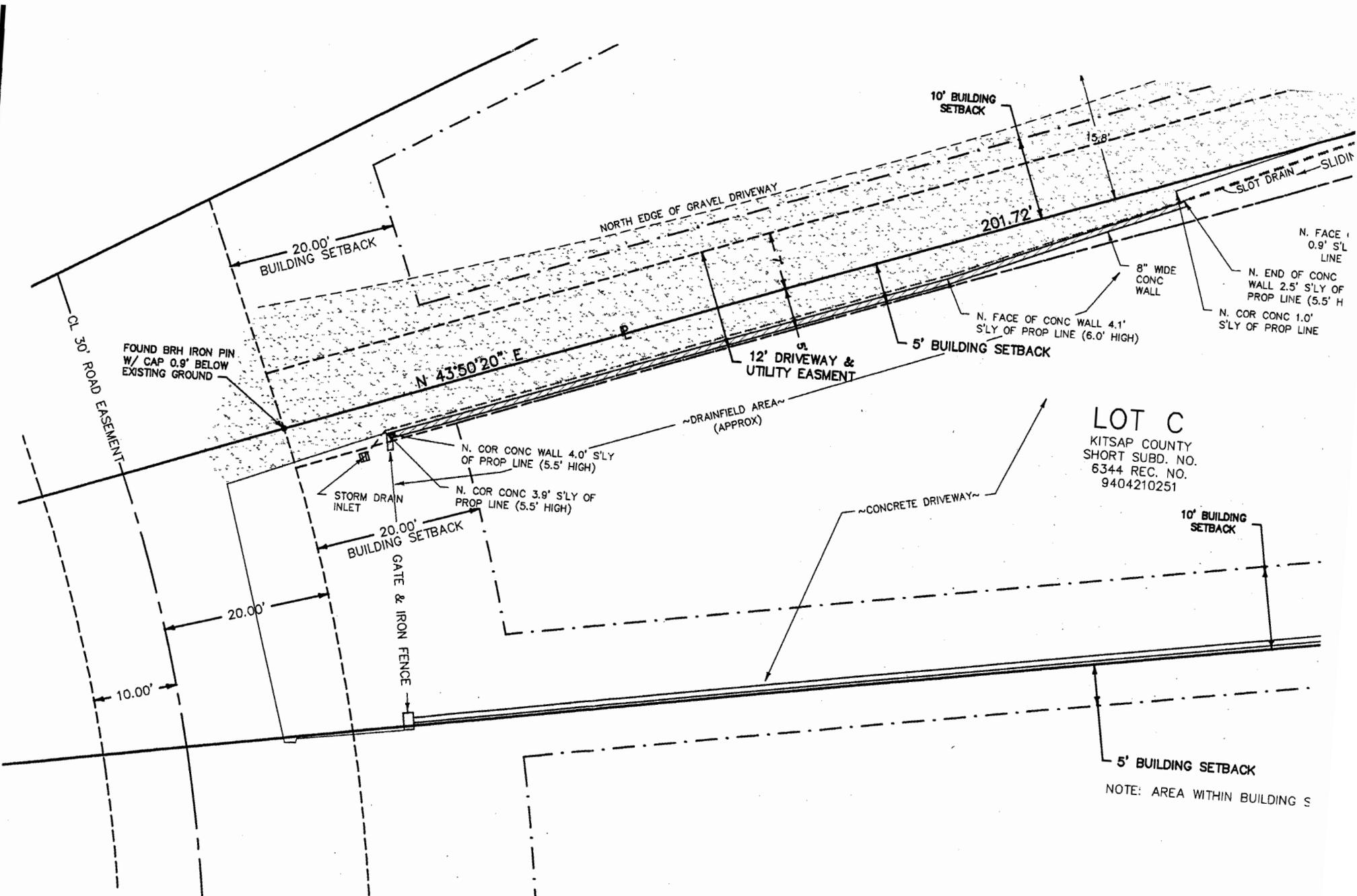
RAISED
 CONC WALK

SLOT DRAIN
 SLIDING GATE

201.72'

15.8'

PORTION OF EXHIBIT 25



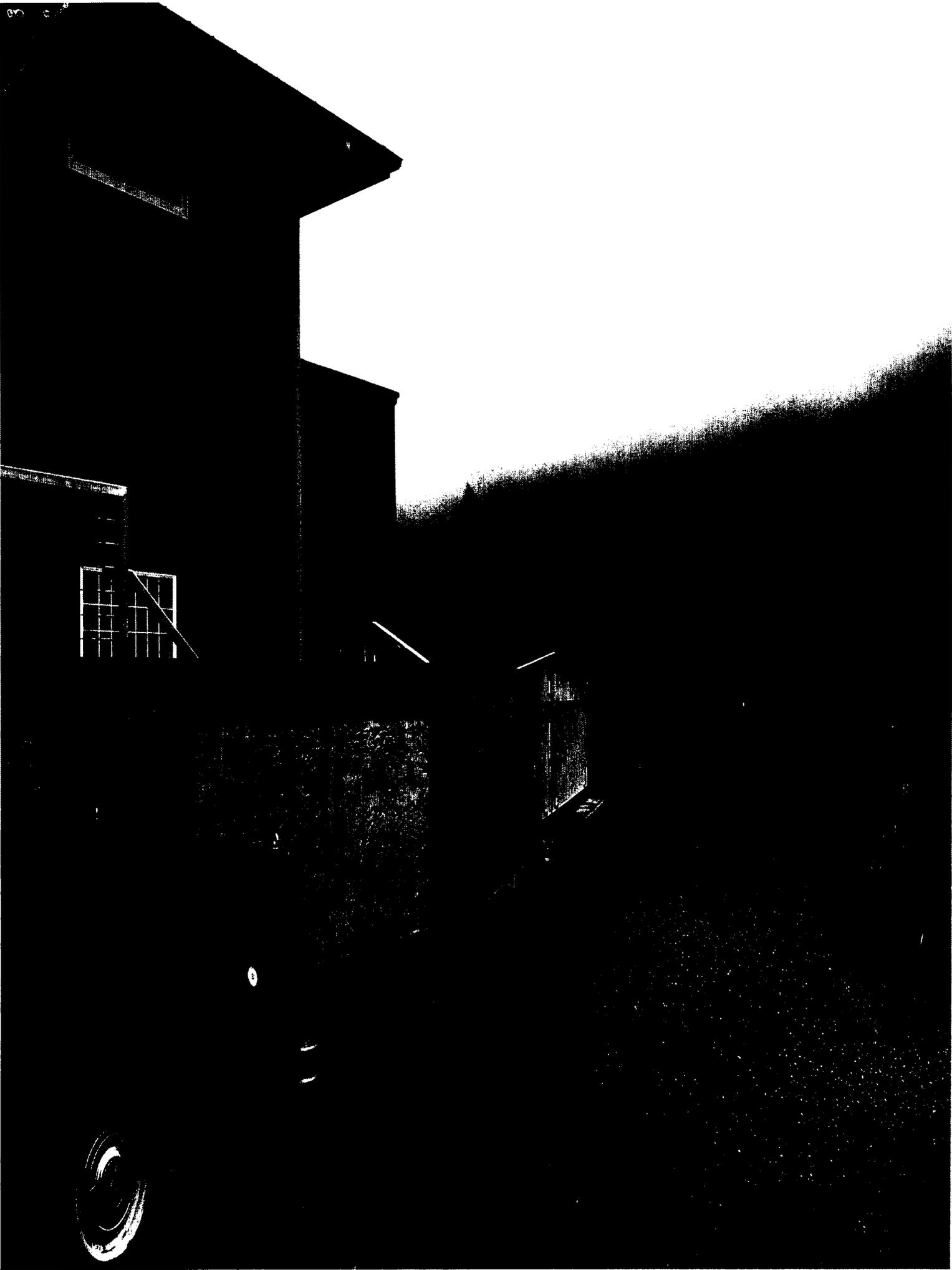
LOT C
 KITSAP COUNTY
 SHORT SUBD. NO.
 6344 REC. NO.
 9404210251

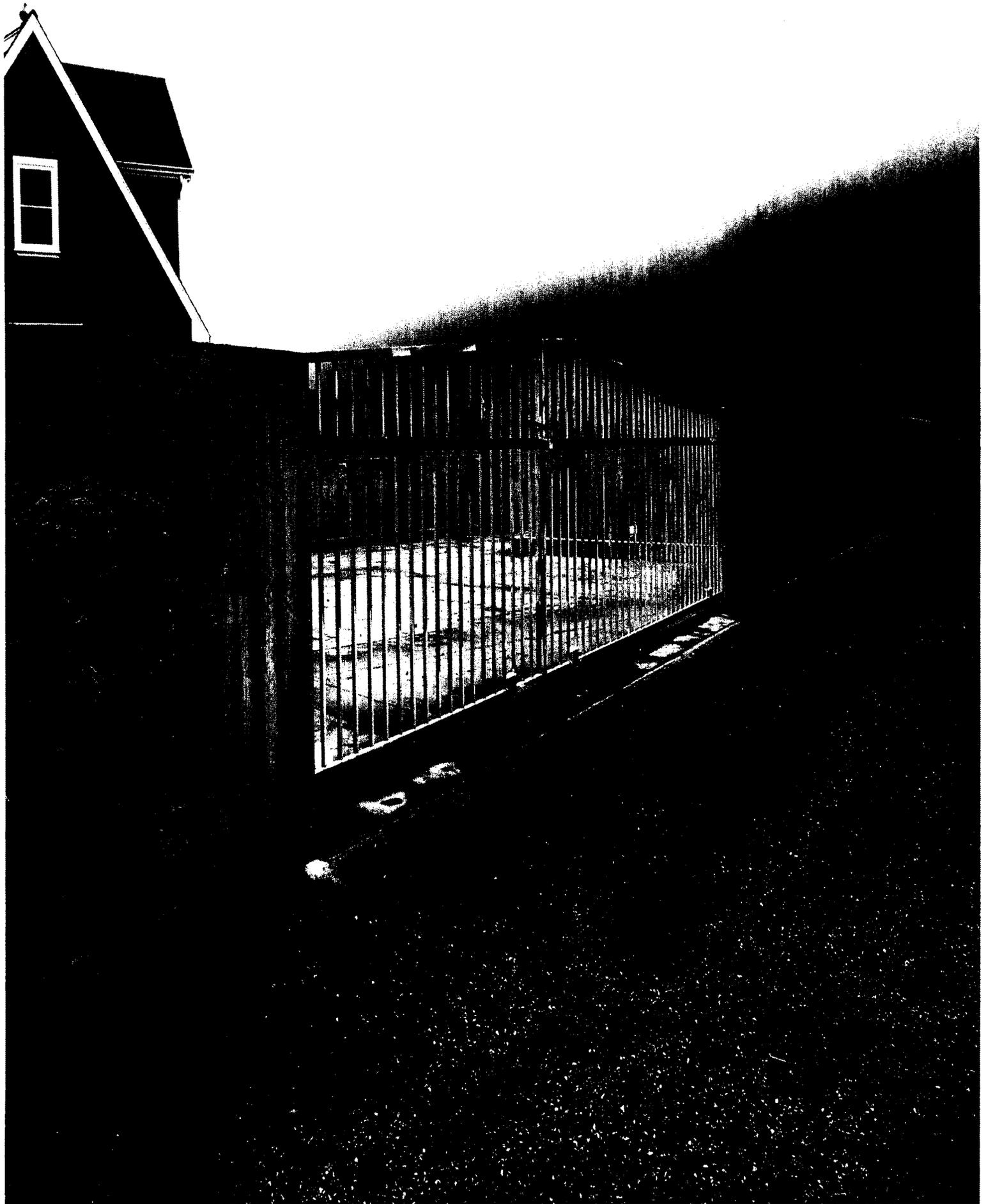
NOTE: AREA WITHIN BUILDING S

APP. 5; EX. 26

FIRST 3 PICTURES
OF EXHIBIT 26







DECLARATION OF MAILING/SERVICE

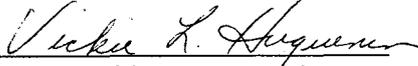
The undersigned, Vickie L. Huguenin, certifies that on the 1st day of May, 2008, she caused to be filed and served, via first-class, prepaid mail, a true and correct copy, or original as noted, of RESPONDENT'S BRIEF, in Court of Appeals/Division II Cause No. 37077-8-II, on the following:

The Court of Appeals/State of Washington, Division II
950 Broadway, #300 MS TB-06
Tacoma, WA 98402
(Original and one copy)

Craig Magnusson
Magnusson Law Office, P.S.
800 Bellevue Way NE, Suite 400
Bellevue, WA 98004

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

Dated this 1st day of May, 2008.


Vickie L. Huguenin