

NO. 38241-5-II

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

WAL-MART STORES, INC., and CLC ASSOCIATES,
Respondents

v.

CLARK COUNTY, Appellant,

and

RP NORTHWEST PROPERTIES and FAIRGROUNDS
NEIGHBORHOOD ASSOCIATION, Additional Parties.

REPLY BRIEF OF APPELLANT CLARK COUNTY

Attorneys for Appellant:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

CHRISTOPHER HORNE, WSBA #12557
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney's Office
Civil Division
604 W Evergreen Blvd.
PO Box 5000
Vancouver, WA 98666-5000
Telephone (360) 397-2478
Fax (360) 397-2184

See
2008
CLARK COUNTY
PROSECUTING ATTORNEY
CHRISTOPHER HORNE
604 W EVERGREEN BLVD
VANCOUVER, WA 98666-5000
TEL: (360) 397-2478
FAX: (360) 397-2184

PM 1-16-09

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. RESPONSE TO WAL-MART'S STATEMENT OF THE CASE.....	1
III. ARGUMENT	2
A. Wal-Mart has failed to prove that Clark County erred in requiring proof of a right to use an off-site private stormwater line.....	2
B. Wal-Mart has failed to satisfy the statutory prerequisites to granting a road modification.....	9
C. Failure to provide adequate Findings and Conclusions required under the Clark County Code, but not required by state law, does not justify reversal of a Board decision. ...	13
IV. CONCLUSION	16

TABLE OF AUTHORITIES

	Page
Cases:	
<i>Arlington v. Central Puget South Growth Management Hearings Board</i> , 164 Wn.2d 768, 193 P.3d 1077 (2008).....	7
<i>Conom v. Snohomish County</i> , 155 Wn.2d 154, 118 P.3d 344 (2205)	15
<i>Cougar Mtn Associates v. King County</i> , 111 Wn.2d 758, 765 P.2d 264 (1988).....	15
<i>Gontmakher v. City of Bellevue</i> , 120 Wn.App. 365, 85 P.3d 926 (2004).....	11
<i>Island County v. Mackie</i> , 36 Wn.App. 385, 675 P.2d 607 (1984).....	6
<i>Keep Watson Cutoff Rural v. Kittitas County</i> , 145 Wn.App. 31, 184 P.3d 1278 (2008).....	15
<i>Maranatha Mining v. Pierce County</i> , 59 Wn.App. 795, 801 P.2d 985 (1990).....	15-16
<i>Niemann v. Vaughn Cemetery Church</i> , 154 Wn.2d 365, 113 P.3d 463 (2005).....	5
<i>Rains v. Washington Dept. of Fisheries</i> , 89 Wn.App.2d 740, 575 P.2d 1057 (1978).....	11
<i>Richardson v. Cox</i> , 108 Wn.App. 881, 26 P.3d 970 (2001)	5
<i>Thompson v. Smith</i> , 59 Wn.2d 397, 367 P.2d 798 (1962)	4
<i>Tugwell v. Kittitas County</i> , 90 Wn.App. 1 (1997).....	12
<i>Weyerhaeuser v. Pierce County</i> , 124 Wn.2d 26 (1994).....	12

Statutes:

RCW 8.24.010 8
RCW 36.70B.110..... 16
RCW 36.70C.130..... 14, 16
RCW 58.17 4
RCW 58.17.165 4
RCW 64.32 4

Other Authorities:

CCC 40.100.060 13
CCC 40.350 9-10
CCC 40.350.060 2
CCC 40.380.060 8
CCC 40.380.060 2
CCC 40.520.040 8
CCC 40.550.010 9-12, 14
CCC 45.20.040 11

I.

INTRODUCTION

Wal-Mart has spent many pages raising and resolving issues not contained in Clark County's brief. If, by this action, Wal-Mart is alleging that this project did not warrant detailed analysis, the Court need only consider that this project is projected to generate 5,510 trips per day according to the experts employed by Wal-Mart. *AR 1567*. Moreover, the site is south of a restricted arterial, NE 134th Street and east of an interstate highway, I-205. Finally, the roads serving this previously undeveloped site have admittedly limiting characteristics.

Be that as it may, Wal-Mart has failed to meet its burden of proof in two regards:

- A. A legal right to use an admittedly private stormwater line within a public easement; and
- B. Satisfaction of the code requirements for granting relief from the Road Standards.

II.

**RESPONSE TO WAL-MART'S
STATEMENT OF THE CASE**

Wal-Mart has referred to the conveyance by the developer of the Waters Edge Condominium to Clark County as a dedication of a public

drainage easement.¹ No dedication ever took place. A utility easement was conveyed by Salmon Creek Developers, Inc., to Clark County.² The distinctions between easements and dedications made by our courts will be discussed below. Moreover, no document was recorded with the Auditor showing the private storm line as a part of the easement conveyance to Clark County. The only reference to the stormwater line contained within the private easement is shown on engineered drawings recorded with the condominium. *AR 1537*.³

III.

ARGUMENT

A. Wal-Mart has failed to prove that Clark County erred in requiring proof of a right to use an off-site private stormwater line.

Clark County has not established a new standard for Wal-Mart. The County treats similar cases similarly. If sufficient evidence exists to demonstrate compliance, engineering details are made conditions of final approval.⁴

¹ *See*, Brief of Respondent, p. 9.

² *See*, AR 1533.

³ A copy of these documents is attached for the Court's convenience as Appendix A.

⁴ *CF* 40.380.060.C. (Preliminary stormwater plan); with CCC 40.380.060.D(3) (Final Stormwater Plan).

In this case, Wal-Mart has hinged its stormwater plan on the use of a pipe located off its property. The feasibility of the plan requires a legal right to use the pipe, as Wal-Mart has supplied no other alternative. Therefore, to prove that the preliminary plan is feasible, Wal-Mart must show a right to use this stormwater line.

This is not a mere engineering question. If, as the examiner found, the line is private, Wal-Mart has no right, without the owner's permission, to use this line. It is the property of Waters Edge Condominium Association. Wal-Mart abandoned, as unfeasible, a stormwater design that relied upon infiltration. Off-site disposal is a necessary prerequisite. Therefore, it is critical, even at the preliminary stage, that Wal-Mart prove it has a right to transport water consistent with its design, *i.e.*, through the line belonging to Waters Edge Condominium Association.

The Waters Edge stormwater line was the subject of much discussion before the examiner. Two facts are, however, clear. First, a utility easement was conveyed by the developer of the condominium to Clark County.⁵ Second, the examiner concluded that the facility was private.⁶ Contrary to Wal-Mart's contentions, no dedication ever

⁵ AR 1533.

⁶ This finding has never been challenged and, in fact, Wal-Mart has alleged this fact in its amended LUPA petition. CP 6, p. 5, lines 1-8.

occurred. Waters Edge was not developed as a subdivision under RCW 58.17, but under RCW 64.32, the Horizontal Regimes Act. A dedication is treated under RCW 58.17.165 as a quit claim deed. The only rights of the person dedicating are limited to those of the public as a whole. In contrast, the grantor of an easement retains all rights to use the property for purposes not inconsistent with the easement.⁷ Since an easement was at issue and not a dedication, Waters Edge had every right to place a private line within the public easement. *Thompson, supra*. Such action does not convert a private line into a public one.

In fact, a review of the easement grant is inconsistent with an interpretation that the stormwater line is public. In its grant to Clark County, Salmon Creek Developers conveyed to Clark County:

. . . a perpetual drainage easement to construct, install, reconstruct, repair, operate and maintain a drainage ditch and/or line and all necessary related facilities, over, under, upon and across the following described real property situated in Clark County, Washington⁸

It would make no sense to refer to the construction/reconstruction of a line or ditch if the grantors intended to convey an existing stormwater line to Clark County.

⁷ *Thompson v. Smith*, 59 Wn.2d 397, 407, 367 P.2d 798 (1962).

⁸ AR 1533.

The hearings examiner made no firm findings or conclusions on Wal-Mart's right to use the private line. The examiner mistakenly referred to the Condominium engineer drawings as "the final plat for Waters Edge Condominiums."⁹ From this, the examiner concluded that the stormwater line to which Wal-Mart planned to connect were within a publicly-dedicated utility easement. Again, it must be recalled that no dedication has ever occurred; only the grant of an easement. The examiner goes on to conclude that:

As such, legal access **appears** to exist and the Waters Edge unit owners **appear** to lack the legal ability to prevent this project from discharging stormwater into this publicly-dedicated system.¹⁰

There was no legal basis to grant a right to Wal-Mart to use a private stormwater line within a public easement, especially in the absence of express language dedicating the line to public use. As the Court is aware, an intent to dedicate will not be presumed. The party asserting the dedication must prove an unmistakable intent to dedicate.¹¹

To the extent the examiner was merely interpreting the easement, deeds are reviewed as a matter of law.¹² (To the extent the intent of the

⁹ AR 2444.

¹⁰ AR 2444.

¹¹ *Richardson v. Cox*, 108 Wn.App. 881, 891, 26 P.3d 970 (2001).

¹² *Niemann v. Vaughn Cemetery Church*, 154 Wn.2d 365, 374, 113 P.3d 463 (2005).

parties is at issue, such a matter is a question of fact.) The examiner's tentative conclusion was, at best, an application of the law to the facts. The right to use an easement does not, ipso facto, include the right to use private improvements within the easements. There is no evidence granting public use of this pipe.

It would be incredible to rely on the engineered drawings as evidence that the easement was intended to include the private stormwater line. First this drawing was never attached to the easement document. Second, the engineer's document, cited *AR 1537*, **wasn't prepared until thirteen years after conveyance of the easement**. In fact, the engineer's document appears to have been prepared May of 2000 and the engineer's stamp is 3/00.

Wal-Mart has argued that an easement gives the right to its holder to use private lines. A review of the authority cited, Stoebuck,¹³ only supports the right to use the owner's land.

Wal-Mart has also claimed that as an upland property owner, Waters Edge has no right to prevent downhill flows. Clark County agrees.¹⁴ But Waters Edge has not blocked the flow; there is an easement

¹³ See, Brief of Respondent at p. 28.

¹⁴ See, *Island County v. Mackie*, 36 Wn.App. 385, 675 P.2d 607 (1984).

that Wal-Mart may use. Therefore, this argument is unavailing. The mere fact that the pipe is sized to carry the upland stormwater means the developer was smart enough to anticipate the need. Whether access is sold or granted is up to the owner.

Finally, Wal-Mart argues that Clark County is collaterally estopped from raising the question of the use of a private stormwater line. First, nowhere in Respondent's brief has there been an analysis of the elements of Estoppel, much less, proof that the elements have been satisfied.

Collateral estoppel requires:

1. Identical issues;
2. A final judgment on the merits;
3. The party against whom the plea is asserted must have been a party to or in privity with the party to the prior adjudication; and
4. Application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

In addition, the issue to be precluded must have been actually litigated and necessarily determined in the prior action.¹⁵

Wal-Mart has failed to show that during the subdivision application, the issue of the private stormwater line was a litigated

¹⁵ *Arlington v. Central Puget Sound Growth Management Hearings Board*, 164 Wn.2d 768, 792, 193 P.3d 1077 (2008).

question and that it was necessarily decided. Absent proof of this element and that it would not work an injustice on the public and the owners of the stormwater facility, Waters Edge Condominium Homeowners Association, collateral estoppel cannot be applied.

Wal-Mart is essentially trying to take the property of Waters Edge Condominium association. The legislature has authorized under very limited circumstances private condemnations under RCW 8.24.010, *et seq.* Condemnation may even be for drainage purposes. Given that the legislature has provided this alternative, Wal-Mart is not authorized to take private property under the guise of Collateral Estoppel.

In summary, Site plan approval under CCC 40.520.040 requires an approved preliminary stormwater plan. “To insure adequate public review and avoid multiple reviews of preliminary plans by county staff, the preliminary stormwater plan shall not be significantly modified after public notice of the final SEPA determination with issuance of a new SEPA determination.”¹⁶ Failure to satisfy the requirements of the stormwater ordinance for preliminary stormwater plans requires denial.¹⁷

¹⁶ CCC 40.380.060C)(2)(h)(2).

¹⁷ CCC 40.520.040(E)(1)(b).

If an application does not comply with the code but with conditions can comply, the project is subject to approval with conditions. In this case, there is no evidence upon which to support additional conditions. Wal-Mart submitted no evidence regarding alternatives. There is no analysis that those alternatives would work. Even at this level, Wal-Mart has not raised a condition that would support approval. Without an alternative and supporting analysis, the county is left to speculate on potential solutions. The Board properly denied site plan approval based on the absence of a lawful conduit to transport water.

B. Wal-Mart has failed to satisfy the statutory prerequisites to granting a road modification.

Clark County Code authorizes, under limited circumstances, modifications to its Road Standards. CCC 40.550.010(A) contains the criteria for granting a road modification. That subsection provides as follows:

A. Criteria.

1. Modification for the standards contained within Chapter 40.350 may be granted in accordance with the procedures set out herein when any of the following conditions are met:
 - a. Topography, right-of-way, existing construction or physical conditions, or other geographic conditions that impose an unusual hardship on the applicant and an equivalent

alternative which can accomplish the same design purpose is available.

- b. A minor change to a specification or standard is required to address a specific design or construction problem which, if not enacted, will result in an unusual hardship.
 - c. An alternative design is proposed which will propose a plan equal to or superior to these standards.
 - d. Application of the standards of Chapter 40.350 to the development would be grossly disproportional to the impacts created.
2. In reviewing a modification request, consideration shall be given to the public safety, durability, cost of maintenance, function, appearance, and other appropriate factors such as to advance the goals of the Comprehensive Plan as a whole. Any **modification shall be the minimum necessary** to alleviate the hardship or disproportional impact. **Self-imposed hardships shall not be used** as a reason to grant a modification request.¹⁸ (*Emphasis added.*)

Wal-Mart challenged the conclusion of the Board of County Commissioners (hereinafter "BOCC") that the examiner committed clear error granting a road modification in light of the detrimental traffic conditions existing along NE Rockwell. More specifically, Wal-Mart claims that because the BOCC did not specifically list 40.550.010(A)(2) as

¹⁸ CCC 40.550.010(A).

a basis for denial of the road modification, that this argument is waived. Wal-Mart has submitted no authority to support this conclusion. First, the Site Plan chapter makes it clear that it is necessary for the applicant to provide sufficient evidence to allow the responsible official to conclude that a site plan application does or can comply with applicable approval and development standards.¹⁹ In addition, the road modification provisions contained in CCC 40.550.010(A) list the criteria for granting a road modification. Finally, the BOCC found and concluded that the examiner committed clear error in granting a road modification in light of the conditions existing along NE Rockwell Road. The failure to include all possible bases for denial of the road modification does not support a reversal of the Board's decision or warrant the grant of preliminary site plan review.

Compliance with the road modification criteria was considered by both the examiner and the BOCC. That the Board did not consider all the statutory bases does not prohibit consideration before this Court. This Court has affirmed on other grounds on numerous occasions.²⁰

¹⁹ See CCC 40.520.040(E).

²⁰ See, e.g., *Rains v. Washington Dept. of Fisheries*, 89 Wn.App.2d 740, 744, 575 P.2d 1057 (1978); see also, *Gontmakher v. City of Bellevue*, 120 Wn.App. 365, 369, 85 P.3d 926 (2004).

Wal-Mart does not pretend that it has presented evidence that there has been compliance with CCC 40.550.010(A)(2) based on any direct evidence. It merely argues that “no one disputed compliance with this requirement.”²¹ Wal-Mart forgets that it bears the burden of proving that it satisfied the conditions entitling it to an exemption from the Road Standards.

Moreover, the authorities cited by Wal-Mart, Weyerhaeuser v. Pierce County, 124 Wn.2d 26 (1994), and Tugwell v. Kittitas County, 90 Wn.App. 1 (1997), do not warrant a different conclusion. In fact, in Weyerhaeuser, the court reversed approval and required additional environmental review due to the examiner’s failure to make appropriate findings and conclusions. In contrast, in Tugwell v. Kittitas County, the court ruled that although the BOCC did not enter findings and conclusions, the appellate court was able to make the necessary analysis based on the review provided by the board. Neither of these authorities supports Wal-Mart’s contention that it is not required to comply with County Code merely because the Board did not include all bases for denial. Again, Wal-Mart bears the burden of proving its entitlement to an exemption.

²¹ See, Brief of Respondent at p. 40.

Additionally, Wal-Mart has claimed exemption from complying with the Road Modification Standards based on general language contained in the examiner's decision. The examiner provided that:

All approval criteria, not raised by staff, the applicant or party to the proceeding, have been waived as contested items and no argument with regard to these items can be raised in any subsequent appeal. The examiner finds those criteria to be met, even though they are not specifically addressed in these finding.²²

This provision is intended to relieve the examiner of discussing every potential criterion that may have been addressed and resolved, unless a party raises an issue regarding compliance. Such a provision does not relieve the applicant of complying with the Clark County Code. It always remains the burden of the applicant to comply with the code. CCC 40.100.060 provides in pertinent part that any permit, certificate or license issued in conflict with the provisions of the UDC (Unified Development Code), intentionally or otherwise, shall be void. The code simply requires that an applicant for a permit or an exemption from a permit demonstrate its entitlement, whether or not opposition is presented.

Alternatively, Wal-Mart has argued that it has satisfied the minimum requirement standard in light of the conditions imposed on the

²² AR 2438.

road modification.²³ As no evidence was presented regarding compliance with the minimum standards contained in CCC 40.550.010(A)(2), this argument is unsupported. This subsection requires the Examiner and the BOCC to consider public safety and that the hardship is not self-imposed in deciding whether to approve or deny road modifications. The Board's concern for safety, as acknowledged by the hearings examiner, provides additional basis for denial of the road modification in this case in addition to the absence of evidence justifying an exemption.

C. Failure to provide adequate Findings and Conclusions required under the Clark County Code, but not required by state law, does not justify reversal of a Board decision.

Clark County has previously argued and supported its claim that the Board did provide required findings. Clark County does not claim that the findings meet trial court standards. It must be recalled that the BOCC is acting in an appellate role, not as the factfinder.²⁴

Wal-Mart claims that Clark County's failure to enter findings and conclusions required by its local code constitutes a violation of RCW 36.70C.130(1). This Court has acknowledged on numerous occasions that certain violations of the Land Use Petition Act, even mandatory

²³ See, Brief of Respondent at p. 41.

²⁴ See, Opening Brief of Clark County at pp. 21-22.

provisions, do not justify dismissal of an otherwise valid petition. For example, the failure to note an initial hearing within 7 days, as required by the legislature, is not a jurisdictional prerequisite. *See, Conom v. Snohomish County*, 155 Wn.2d 154, 162, 118 P.3d 344 (2005); *see also, Keep Watson Cutoff Rural v. Kittitas County*, 145 Wn.App. 31, 38, 184 P.3d 1278 (2008). Therefore, even if this Court concludes that Clark County failed to issue sufficient findings and conclusions, reversal is not warranted. This Court should remand for complete findings and conclusions.

For example, in *Cougar Mtn Associates v. King County*, 111 Wn.2d 758, 765 P.2d 264 (1988), the supreme court reversed and remanded for reconsideration even though the supreme court found errors in the findings of the county decision. In contrast, in *Maranatha Mining v. Pierce County*, 59 Wn.App 795, 805, 801 P.2d 985 (1990), the court reversed and remanded with instructions to grant a permit. Of importance, is the fact that the court concluded that the law would support no other decision other than issuance of the permit. Therefore, reversal with directions to issue a permit is only appropriate in the limited circumstances where the court concludes that a no findings based on the record could justify denial and that the law and facts support no other conclusion other

than issuance of a permit. The appellant has failed to meet the standard, as found by the court in Maranatha Mining v. Pierce County, *supra*. Therefore, even if this court concludes that the absence of findings and conclusions are more than harmless error²⁵, not otherwise required by regulatory reform under RCW 36.70B.110, remand is appropriate.

IV.

CONCLUSION

Clark County respectfully requests this Court reverse the trial court's decision and reinstate the decision of the Board of Clark County Commissioners.

Respectfully submitted this 16th day of January, 2009.

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By



Christopher Horne, WSBA #12557
Senior Deputy Prosecuting Attorney

²⁵ RCW 36.70C.130(1)(a).

APPENDIX A

UTILITY EASEMENT

8708030061

THE GRANTOR(S), Salmon Creek Developers, Inc. a Washington Corporation for and in consideration of valuable consideration, as set out in part below do hereby bargain, sell and convey to CLARK COUNTY, WASHINGTON, a Municipal Corporation, its heirs and assigns, a perpetual drainage easement to construct, install, reconstruct, repair, operate and maintain a drainage ditch and/or line and all necessary related facilities, over, under, upon and across the following described real property situated in Clark County, Washington, particularly described as follows:

SEE ATTACHED EXHIBIT "A" & "B"

GRANTORS agree that no building, wall or structure with footings shall be placed upon the granted property without the written permission of the County.

The terms and conditions of this easement shall be binding upon the heirs and assigns of the grantors and of Clark County, Washington.

CONSIDERATIONS: Mutual Benefits

DATED this 29th day of July, 1987

R. M. Burt
PRES SCD INC

OREGON)
STATE OF WASHINGTON)
COUNTY OF CLARK)

Accepted on behalf of Clark County under the authority of CCC 2.33.095.

[Signature]
Director of Public Works
Clark County, Washington



I hereby certify that I know or have satisfactory evidence that R. M. Burt
President SCD Inc.

signed this instrument and acknowledged it to be His free and voluntary act for the uses and purposes mentioned in the instrument.

135

DATED: July 29, 1987

NOTARY'S SIGNATURE: *Lynn Barrow*

TITLE: _____

MY APPOINTMENT EXPIRES: 8-26-89

(IM)IM-FORM-1

128 001533

10,854-LD-452
7/7/87
KDB/WG

LEGAL DESCRIPTION
STORM DRAINAGE EASEMENT
WATER'S EDGE AT SALMON CREEK
CLARK COUNTY, WASHINGTON

Real property situated in Clark County, Washington, lying within the Northwest quarter of Section 25, Township 3 North, Range 1 East of the Willamette Meridian, being a strip of land, 20.00 feet wide, lying 5.00 feet left and 15.00 feet right of the following described line:

Beginning at the Southwest corner of said Northwest quarter; thence along the West line of said Northwest quarter North $0^{\circ} 13' 31''$ West 818.57 feet to the true point of beginning of the line herein described; thence North $29^{\circ} 03' 44''$ East 63.49 feet; thence North $50^{\circ} 03' 18''$ East 221.60 feet; thence South $84^{\circ} 15' 17''$ East 294.29 feet to a point, said point hereinafter referred to as "Point A"; thence North $12^{\circ} 31' 27''$ East 190.00 feet to the terminus of said line.

EXCEPT that portion lying within the N.E. Salmon Creek Avenue right-of-way.

The sidelines of this easement shall be extended or shortened as necessary to provide a uniform strip of land, 20.00 feet wide.

ALSO a strip of land, 20.00 feet wide, lying 15.00 feet left and 5.00 feet right of the following described line:

Beginning at said "Point A"; thence South $20^{\circ} 37' 26''$ East 120.00 feet to the terminus of said line.

EXCEPT that portion lying within the N.E. Salmon Creek Avenue right-of-way.

The sidelines of this easement shall be extended or shortened as necessary to provide a uniform strip of land, 20.00 feet wide.

136

Exhibit A

001534

10,854-LD1-452
7/7/87
KDB/wg

LEGAL DESCRIPTION
CREEK EASEMENT
WATER'S EDGE AT SALMON CREEK
CLARK COUNTY, WASHINGTON

Real property situated in Clark County, Washington, lying within the Northwest quarter of Section 25, Township 3 North, Range 1 East of the Willamette Meridian, being a strip of land, 35.00 feet wide, lying 25.00 feet left and 10.00 feet right of the following described line:

Beginning at the Southwest corner of said Northwest quarter; thence along the West line of said Northwest, quarter North 0° 13' 31" West 1347.69 feet; thence North 89° 46' 29" East 349.77 feet to a point on the Southerly right-of-way line of N.E. 134th Street (65.00 feet from centerline) said point being the true point of beginning of the line herein described; thence North 89° 36' 55" East 128.76 feet; thence South 78° 43' 50" East 90.05 feet; thence North 89° 31' 16" East 49.58 feet to a point on the Westerly right-of-way line of N. E. Salmon Creek Avenue (20.00 feet from centerline), said point being the terminus of the line herein described.

The sidelines of this easement shall be extended or shortened as necessary to provide a uniform strip of land, 35.00 feet wide.

- - -137

FILED FOR RECORD
CLARK CO. WASH
PUBLIC WORKS
AUG 3 11 PM '87

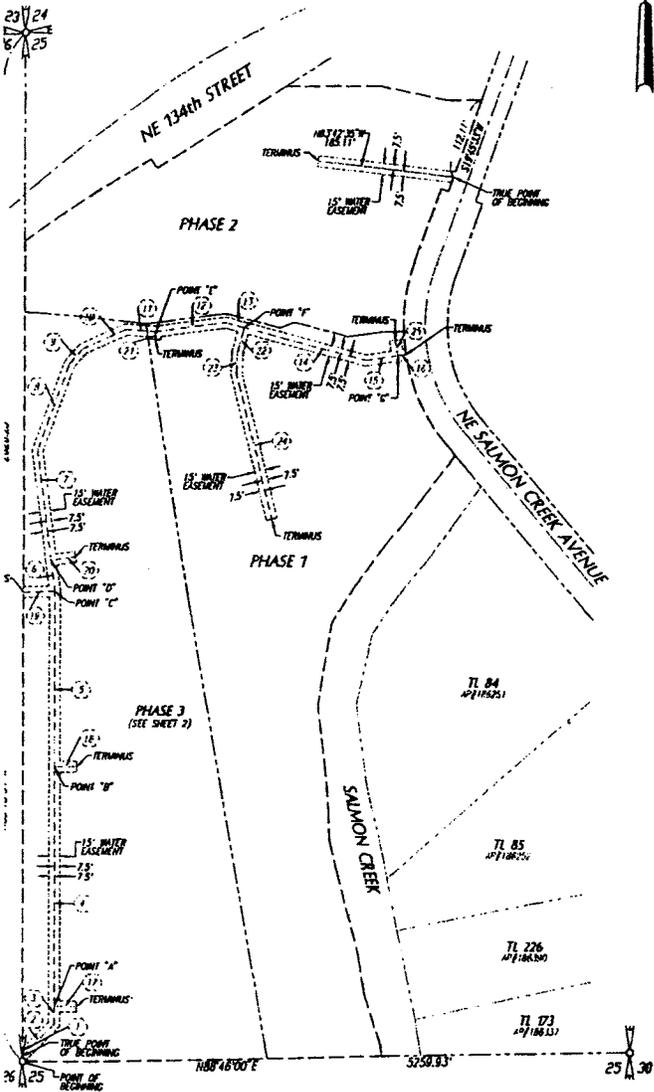
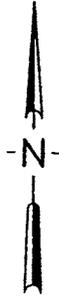
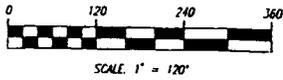
AUGUST
ELIZABETH A. LUCE
Exhibit B

001535

BK 310 P802

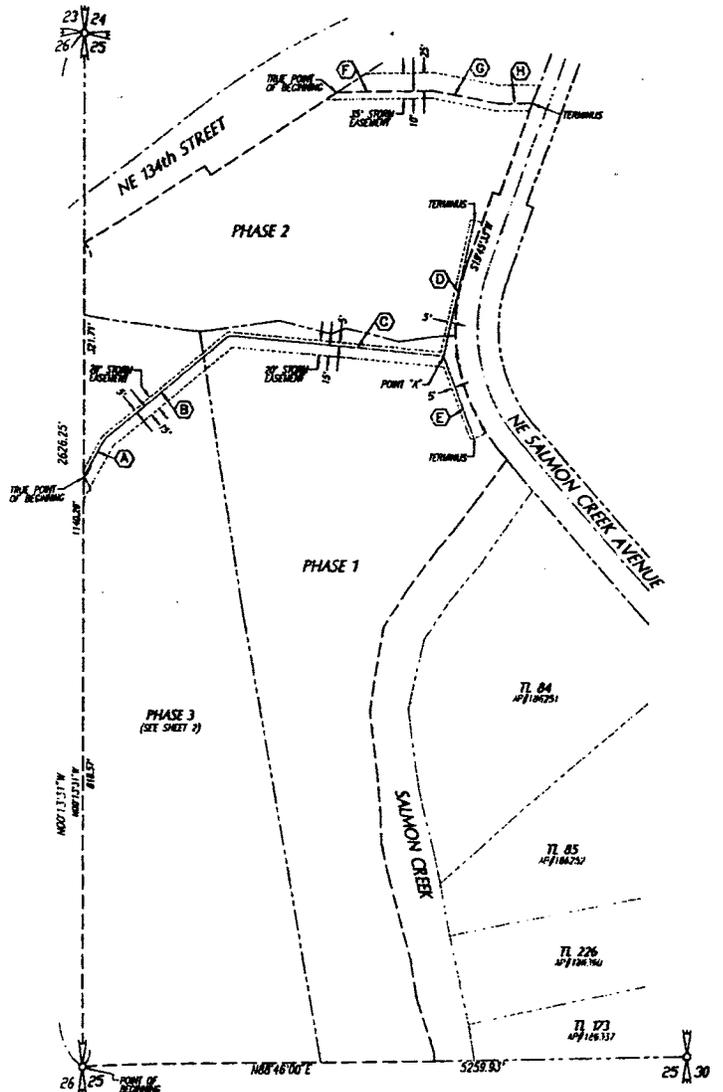
WATER'S EDGE CONDOMINIUM PHASE 3

A PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER
AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION
25, TOWNSHIP 3 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN
CLARK COUNTY, WASHINGTON
MAY, 2000



WATER EASEMENT
AFF#3270034

N07°13'31"W 6.72	N88°36'30"E 40.73	S07°25'16"W 10.50
N43°46'00"E 53.35	N87°24'44"E 95.00	S14°47'38"W 34.77
N07°13'31"W 24.08	S75°12'22"E 25.00	S07°19'36"W 29.07
N07°13'31"W 332.50	S75°12'22"E 171.27	S14°51'18"E 206.26
N07°14'22"W 245.79	N80°36'54"E 43.58	N07°23'06"W 21.50
N07°12'41"W 43.84	N80°36'54"E 11.42	
N07°12'41"W 153.46	N89°46'29"E 29.50	
N19°50'59"E 125.24	N89°46'29"E 29.50	
N07°53'48"E 26.40	S08°50'36"W 43.94	
N02°05'59"E 61.31	N02°27'10"E 32.91	



STORM EASEMENT
AFF#08030061

A	N29°03'44"E 53.49
B	N50°03'18"E 221.60
C	S8°15'17"E 204.29
D	N12°31'27"E 190.00
E	S20°12'26"E 120.00
F	N89°36'55"E 120.76
G	S78°41'50"E 90.05
H	N89°31'16"E 49.58



SHEET 3 OF 7
1789771128

BK 310 P802 3 of 7

001307

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

WAL-MART STORES, INC., and CLC
ASSOCIATES,

Respondents,

v.

CLARK COUNTY,

Appellant,

And

RP NORTHWEST PROPERTIES and
FAIRGROUNDS NEIGHBORHOOD
ASSOCIATION,

Additional Parties.

No. 38241-5-II

AFFIDAVIT OF SERVICE

FILED
BY
JAN 16 2009
CLERK OF COURT
CLARK COUNTY
WASHINGTON

The undersigned, being first duly sworn, upon oath, deposes and says:

That I am a citizen of the United States of America and of the State of Washington, living and residing in Clark County, in said state; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that by service indicated below on this 16th day of January, 2009, affiant caused a true and correct copy of *Reply Brief* and *Affidavit of Service* to be directed to the attorneys-of-record for the above-named parties at the following addresses:

Charles E. Maduell
Davis Wright Tremaine LLP
1201 Third Avenue #2200
Seattle WA 98101-3045

U.S. Mail
Facsimile
Federal Express
Hand Delivered

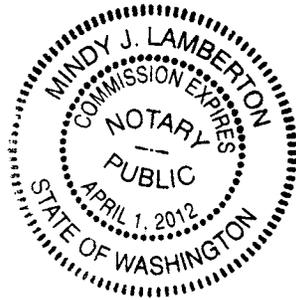
John S. Karpinski
2612 E 20th Street
Vancouver WA 98661

- U.S. Mail
- Facsimile
- Federal Express
- Hand Delivered

Further your affiant saith not.

Thelma Kremer
Thelma Kremer
Clark County Prosecutor's Office
Civil Division
PO Box 5000
Vancouver WA 98666-5000

SUBSCRIBED and SWORN to before me this 16th day of January, 2009.



Mindy Lambertson
NOTARY PUBLIC in and for the State of
Washington, residing in Vancouver.
My commission expires: 4-1-12