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A. Lake Jane Estates confuses “enforcement” authority with “approval” authority.

Lake Jane Estates (LJE) argues that it “Has the Direct Authority to Enforce the Plat Restrictions Regarding Subdivisions.”¹ This assertion completely misses the point. No one contends that LJE does not have authority to enforce any violation of the restrictive covenants. That authority is expressly granted in Restriction 14. Rather, the issue is whether LJE has authority to approve the subdivision of lots. Restriction 6 grants that authority solely to the original developer, Lake Tapps Development Company.

LJE then asserts that the authority to enforce the restriction on subdivisions would be an empty power if it could not also “wield the authority to approve or disapprove subdivisions.”² This assertion asks this Court to completely ignore the express intention of the drafters of the restrictions. Though the drafters gave both the developer and LJE the power to enforce the restrictive covenants (Restriction 14), they gave only the developer the authority to approve subdivisions (Restriction 6), and they gave only LJE the power to approve building plans (Restriction 4).
(Ex. 1)

¹ Respondent’s Brief, p. 16.

² Respondent’s Brief, p. 17.

LJE bases its argument entirely upon the opinion of the Missouri Court of Appeals in *Sherwood Estates Homes Association, Inc. v. Schmidt*, 592 S.W.2d 244, 247 -248 (Mo. App. W.D. 1979). LJE claims that the Missouri court addressed the identical issue presented here.³ That assertion misrepresents the *Sherwood* decision.

In *Sherwood*, the developer made an express assignment of its authority to a subsequently formed homeowners association.⁴ The issue for the Court was the scope of the powers transferred by this assignment. The Court concluded that the assignment included all of the developer's powers, including the power to approve building plans. The Court's reasoning was set forth in the portion of that opinion not cited by LJE in its brief:

Stanton was a subdeveloper and builder, and once its role was completed in Sherwood Estates it had an overriding interest in transferring all powers and duties attendant to the Restrictions, and authority to enforce them, to the Association whose membership was comprised of the homeowners in Sherwood Estates. In view of the homeowners' natural community of interest it is impossible to imagine a more suitable repository for such powers, duties and authority. Manifestation of Stanton's intent to

³ Respondent's brief, p. 17.

⁴ At page 28 of its brief, respondent argues that there was no "formal written assignment" from the developer to the association in *Sherwood*, but that the assignment grew out of the provision in the restrictive covenant giving enforcement power to both the developer and the association. That is incorrect. The court held that the developer filed and recorded written declarations which assigned to the association the right to enforce all restrictions. *Id.*, at 246-247. Further, the restrictive covenants created by the developer granted that right of enforcement solely to the association, not jointly with the developer. *Id.*

substitute the Association in its place for the purpose of assuming and performing all powers and duties associated with the Restrictions, including but not limited to Restriction VII, and the authority to enforce them, permeates the “Sherwood Estates Homes Association Declaration”. As it turned out, Stanton's persistent desire to unburden itself of any continuing responsibility concerning Sherwood Estates was indeed fortunate as Stanton's corporate charter was subsequently forfeited in 1967.

Id. at 247-248. Thus, the Court concluded that the developer intended to substitute the association in its place for all powers and duties under the restrictive covenants.

In the case at bar, however, there was no assignment of powers by the developer to a subsequently formed homeowners association. Rather, the developer formed LJE at the time it recorded the restrictive covenants, and carefully divided the powers between itself and the homeowners association. There was no subsequent transfer of any powers from the developer to the association, by which a court could conclude that it intended to substitute the association in its place, as in *Sherwood*.

LJE is asking this Court to ignore the plain and obvious meaning of the language used in Restriction 6 which gives only the developer the authority to approve subdivisions. In the absence of any evidence that the developer intended to transfer the authority to LJE, this Court has no legal authority to re-write the restrictive covenant to give that authority to LJE.

B. LJE cites no evidence indicating that it is the de facto successor to the developer for purposes of approving subdivisions.

LJE asserts that, having exercised the authority to review and approve proposed subdivision authority “with the developer’s consent,” it is the legitimate de facto successor to the developer.⁵ There is absolutely no evidence that the developer either knew of or consented to LJE reviewing or approving any subdivision in the plat, and LJE cites to no evidence in the record to support that assertion.

LJE bases its argument that it is the de facto successor to the developer solely by analogy to the case of *Green v. Normandy Park Riviera Community Club, Inc.*, 137 Wn. App. 665, 684, 151 P.3d 1038 (2007), *review denied*, 163 Wn.2d 1003 (2008). However, as discussed in detail in appellant’s opening brief at pages 26-28, the facts in *Green* are significantly different from the case at bar. LJE makes no attempt to address those differences.

In *Green*, there was no question that the original homeowners association had the power to approve building plans because the developer recorded an express assignment of all of its rights under the covenants to the association. The issue in *Green* was whether those assigned powers

⁵ Respondent’s brief, p. 22.

passed to a successor homeowners association formed after the dissolution of the original association. The Court concluded that those powers passed because the original assignment to the homeowners association expressly included its “successors or assigns.”

In the case at bar, the issue is not the transfer of power from one homeowner association to its successor. Instead, the issue is whether the developer ever transferred its power to approve subdivisions to the association. In contrast to *Green*, there is no evidence of any assignment of that power to LJE. Unlike in *Green*, where the developer clearly expressed an intent to pass all of its powers to the association or its successor, in the case at bar the developer clearly expressed its intent to retain the power to approve subdivisions, and gave LJE the separate power to approve building plans.

As discussed in appellant’s opening brief, LJE’s attempt to usurp that power to approve subdivisions does not confer any legal rights upon it in derogation of the explicit language of Restriction 6. LJE cites no legal authority to suggest that the mere exercise of a power granted to another confers the right to exercise that power.

LJE does not dispute that if it is not the successor to the developer for purposes of approving subdivisions, Restriction 6 is unenforceable.

C. The evidence clearly shows that LJE acted unreasonably and in bad faith in denying Jensen’s request to subdivide his property.

LJE asserts that Jensen is arguing that his proposal had to be approved solely because it was identical to the Vanunu subdivision proposal approved by LJE shortly before denying the Jensen proposal.⁶ That has never been the limit of Jensen’s argument. Rather, denial of the Jensen proposal which included the same size lots, using the same access streets and drainage ditches as the Vanunu proposal, and which had far more neighborhood support than the Vanunu proposal, is a strong indicator that the LJE Board was acting unreasonably and with ulterior motives. Approval of another subdivision with the same size lots less than a year later is another indication. The ulterior motive is confirmed by the testimony of Jeff Brain, the presiding officer of LJE.

LJE tries to justify approving the Vanunu subdivision proposal just a few months prior to denying the Jensen proposal by saying it was “a unique opportunity to get rid of a neighborhood eyesore and hazard.”⁷ Yet less than a year later, LJE approved a subdivision request by Heller for the same size lots, without any similar claim of “unique opportunity.” (Ex. 86)

⁶ Respondent’s brief, p. 29.

⁷ Respondent’s brief, p. 30-31.

Melissa Gubbe, the executive treasurer for LJE, testified that she “knew the City was going to force the property owner to do something to fix up that eyesore whether [LJE] allowed it to be subdivided or not.” (RP 281) Yet in respondent’s brief at page 31, LJE asserts that the Board was not aware of any plans by the City to get something done about it, citing only to RP 389-390. That is a misrepresentation of that testimony. At RP 389-390, when Mr. Brain was asked if he was aware that the City was pursuing efforts to get that resolve the problem regarding the condition of the fire station on the Vanunu property, he answered “I don’t recall exactly, no.” Lack of recall is not the same as denial.

LJE also tries to distinguish the Vanunu proposal by saying drainage was not as big of a potential problem.⁸ Yet there is no competent evidence of a drainage problem from the Jensen proposal. Ms. Gubbe testified that there were drainage problems generally within the plat, and the Board had concerns that more impervious surfaces would reduce the amount of surface water draining from the Jensen lots. (RP 258-261) However, Ms. Gubbe acknowledged that she is not an expert in drainage issues, has no training or experience in drainage issues, and no one on the Board has any training or experience in drainage issues. (RP

⁸ Respondent’s brief, p. 30.

276-277) Ms. Gubbe and Mr. Brain both acknowledged that the Board asked Mr. Jensen to provide a report from a drainage expert, and he did so. (RP 277, 320) Ms. Gubbe testified that the board did not have any information from any qualified expert to indicate that there were reasons to be concerned about storm drainage from the Jensen properties, and that the Board the board knew that the City of Bonney Lake had storm drainage regulations intended to address storm-water runoff from developments. (RP 278-279) Nowhere does LJE cite to competent evidence of drainage problems that might result from the Jensen proposal. A decision made without a thorough investigation and upon inaccurate information is inherently unreasonable. *Riss v. Angel*, 131 Wn.2d 612, 625, 934 P.2d 669 (1997).

LJE asserts that Jensen complains that the results of the neighbor survey should have been determinative.⁹ Jensen has never made that claim. Rather, Jensen has complained that the Board failed to give the results of the neighbor surveys great weight in accordance with their announced policy. To the contrary, the Board gave the results of the neighbor survey virtually no weight, and completely discounted all of the votes collected and submitted by Mr. Jensen, even after independently

⁹ Respondent's brief, p. 31.

confirming those votes.

LJE's brief makes the incredible assertion that Mr. Jensen "didn't bother to submit" votes from neighbors that were opposed to his project.¹⁰ Tellingly, there is no citation to the record to support this assertion. What Mr. Jensen actually testified (and his testimony was unrebutted) was that any neighbor who was opposed to his project said they were going to fill out and return their ballot themselves. (RP 106, 182) He did not receive any ballot in opposition that he did not turn in. *Id.*

LJE asserts that there was no "legitimate" evidence at trial of a vendetta against Jensen.¹¹ In fact, at trial Mr. Brain reaffirmed his earlier deposition testimony that "One of the reasons why we did not lend as much credence to Mr. Jensen, the opinions that Mr. Jensen collected, was that on previous occasions he had tried to undermine, in my opinion any way, the board's efforts at getting more people to participate in a special meeting to change some things about the bylaws." (RP 351-352) LJE says this is "only" the opinion of Mr. Brain. That was not what he said in his deposition. He said "we" did not lend credence to the votes submitted by Jensen, clearly indicating the Board. LJE asserts that Mr. Brain was "very clear he was speaking only for himself," but there is no testimony at

¹⁰ Respondent's brief, p. 32.

¹¹ Respondent's brief, p. 33.

the cited portions of the record to support that assertion.¹² Mr. Brain was vice president of LJE, and the presiding officer during the deliberations and vote on Jensen’s proposal. (RP 248) Despite his subsequent attempts to back-pedal, his testimony is a clear admission that LJE refused to consider the positive neighbor survey in retaliation for his opposition to the Board’s attempt to change the bylaws to increase its own powers.

LJE asserts that it was not dead set against the Jensen proposal, and that the Board was open to considering less intensive development options.¹³ This was not the testimony at trial. Mr. Brain unequivocally testified that “By the board's reckoning” there were “no measures he could take to gain approval other than to leave it as is.” (RP 356)

LJE does not dispute that it approved the Heller subdivision less than a year after it denied the Jensen proposal. LJE complains that there was no testimony about the Heller subdivision because the Court would not allow it. That misrepresents what happened at trial. LJE asked a question to Ms. Gubbe regarding the “Schlitcus” proposal, to which Jensen objected on the basis of relevance. (RP 275) LJE’s counsel asserted that the testimony was relevant on the issue of whether LJE was the successor to the developer. *Id.* Jensen’s counsel pointed out that

¹² Respondent’s brief, p. 33-34.

¹³ Respondent’s brief, p. 34.

whether LJE was the successor would be judged by its status at the time of making the decision on the Jensen proposal, not based on subsequent conduct. The trial court sustained the objection to the question. (RP 276) LJE then asked about the Heller subdivision. When Jensen's counsel expressed the same objection, LJE withdrew the question before any ruling was made.

LJE's file regarding the Heller subdivision proposal was offered by LJE and admitted without objection from Jensen. (Ex. 86; RP 190-191) LJE never offered any testimony regarding the Heller proposal at trial. LJE has not assigned error to the trial court's order to strike the declarations regarding that Heller proposal that LJE offered after trial. The fact that LJE approved the Heller subdivision less than a year after denying the Jensen proposal is persuasive evidence that LJE's claim at trial that they denied the Jensen request because they did not want to "open the floodgates to more subdivisions" was a mere pretext.

D. LJE's wrongdoing is not immunized by the business judgment rule.

LJE argues that its unreasonable conduct in reviewing Mr. Jensen's request for consent to subdivide is immunized by the "business judgment doctrine." In a footnote, LJE argues that the business judgment rule shields individual directors from liability for damages stemming from their

decision, while the business judgment doctrine protects the decision itself.¹⁴ LJE acknowledges that the individual liability of the board members of LJE is not at issue in this case, but asserts that the business judgment doctrine immunizes this Court's review of the decision itself.¹⁵

No Washington case, including those cited by respondent, recognizes a business judgment "doctrine" separate and distinct from the business judgment rule. The business judgment rule in Washington does not preclude this Court from reviewing the decision made by LJE in this case.

In *Riss v. Angel, supra*, the members of the homeowners association argued that the business judgment rule protected them from liability unless their decision was made without authority and in bad faith. The Supreme Court stated, "[t]he role of the business judgment rule where homeowners associations is concerned is the subject of ongoing debate." *Riss v. Angel, supra*, at 631. The Court noted that one commentator argues that the business judgment rule is inapplicable to property owners' associations, in part because such associations are not in existence to engage in entrepreneurship, or to take risks in hope of profits. *Id.* The Court held, "whether or not the business judgment rule should be applied

¹⁴ Respondent's brief, p. 35-36.

¹⁵ Respondent's brief, p. 36.

to property owners associations, the decisions of these associations must be reasonable.” *Id.*, at 632. Application of the business judgment rule did not prevent the Supreme Court from finding that the homeowners association acted unreasonably in denying the plaintiff’s proposal to construct. *Id.*, at 633.

In so ruling, the Court made it clear that reasonable care is not simply the absence of bad faith. Reasonable care requires the Board to act with the level of care as a reasonable prudent person in a like position would act. *Id.*, at 632-633. And even if the Board acted with reasonable care, they cannot act in bad faith. *Id.*, at 625. The business judgment rule does not affect the analysis in this case, which is governed by the standards set for in *Riss v. Angel*.

E. LJE makes little effort to support the trial court’s erroneous evidentiary rulings on damages.

LJE asserts that the issue of the trial court’s refusal to consider Jensen’s evidence of damages is moot because Jensen did not make a separate assignment of error to Conclusion of Law 12. RAP 10.3(g) does not require separate assignments of error for each conclusion of law, as it does for each challenged finding of fact. Rather, it states that the appellate court will review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto. Jensen

assigned error to the trial court's refusal to allow Mr. Jensen to lay the foundation for his opinion of damages, and thoroughly discussed that error in the argument related thereto. Even if RAP 10.3(g) required a separate assignment of error for Conclusion of Law 12, "[a] minor technical violation of RAP 10.3(g) will not bar appellate review where the nature of the challenge is perfectly clear and the challenged ruling is set forth and fully discussed in the appellate brief." *Polygon Northwest Co. v. American Nat. Fire Ins. Co.*, 143 Wn. App. 753, 774, 189 P.3d 777, 788 (2008); *see also, State v. Breitung*, 155 Wn. App. 606, 619, 230 P.3d 614, 621 (2010).

The trial court made no specific findings relating the amount of damages sustained by Jensen, because it found that LJE did not act unreasonably or in bad faith in denying his subdivision request. If this Court reverses that determination, then the trial court will need to make specific findings as to damages. In that event, the trial court's failure to allow certain evidence relating to damages becomes material.¹⁶

Jensen alleges that the trial court committed error in refusing to allow him to testify regarding offers he received for comparable lots at the

¹⁶ If this Court finds that LJE is not the successor to the developer, and that the restriction is unenforceable because there is no entity authorized to grant consent, then the damage claim would be moot.

time at issue. LJE's only response is one sentence on page 46 of its brief, stating that the Washington Supreme Court has held in a 1894 case that offers to purchase property are inadmissible to establish value. LJE ignores and makes no attempt to distinguish the subsequent decision of the Washington Supreme Court in *Donaldson v. Greenwood*, 40 Wn.2d 238, 252, 242 P.2d 1038 (1952), where the Court stated that one of the factors that may be considered in the proof and determination of value of real property is a bona fide offer to purchase.

Jensen also alleges that the trial court committed error in refusing to allow him to testify regarding prices currently paid by builders for comparable lots. LJE failed to address this issue at all with argument or citation to authority. It merely makes the bald assertion, without any citation to authority, that "testimony based on hearsay is not admissible in any event."¹⁷ This assertion is of course nonsense, since the hearsay rule is subject to numerous exceptions. ER 801-804. Specifically related to this case, ER 703 specifically allows an expert witness to rely upon facts or data that would not be admissible in evidence, if of a type reasonably relied upon by experts in a particular field in forming opinions upon the subject. Appraisers customarily use reports of sales of comparable

¹⁷ Respondent's brief, p. 46.

properties which, though technically hearsay, are reasonably relied upon to establish the value of the subject property.

LJE argues that Jensen should not be allowed to testify as the property owner because his testimony was not based upon relevant and competent methods of ascertaining value. Not only is LJE's analysis flawed,¹⁸ it cannot be considered where LJE has not appealed from or assigned error to the trial court's admission of Jensen's testimony related to the value of the lots that would have been created by Jensen's proposal.

LJE also argues that Jensen is not qualified to testify as an expert. Though LJE cites to the relevant considerations set forth in ER 702, it makes no attempt to apply them to the facts in this case. As discussed in appellant's opening brief, Mr. Jensen has been building houses and

¹⁸ Respondent relies on *Port of Seattle v. Equitable Capital Group, Inc.*, 127 Wn.2d 202, 211, 898 P.2d 275, 279 (1995), where the Court held that the property owner is entitled to explain his valuation by relevant and competent methods of ascertaining value. It affirmed the exclusion of the property owner's testimony where he provided no method, reasoning or explanation for his statement that a buyer would be willing to pay \$12 per square foot for the property. In contrast, Mr. Jensen testified extensively about the comparable sales of lots and houses to support his testimony of the value of his lots and houses. Comparable sales are an accepted basis for valuation of property.

The testimony offered by Mr. Jensen to support his opinion of the value of his houses and lots in 2006 and 2010 is similar to that approved in *Eastlake Const. Co., Inc. v. Hess*, 33 Wn. App. 378, 382, 655 P.2d 1160 (1982), *remanded on other grounds*, 102 Wn.2d 30 (1984). In that case, the owner gave his opinion of the fair rental value of three apartment units, and based those figures upon the fact that he rented one of his own units at \$275 per month, and that one of the purchasers later rented a unit for \$275 per month. The Court of Appeals ruled that such testimony is admissible pursuant to ER 701, relating to opinion testimony by lay witnesses.

subdividing properties since his late teens, and he has bought and sold multiple houses and lots in the vicinity of the subject property during the time at issue in this case. The trial court never made a ruling as to whether it considered Mr. Jensen qualified as an expert, but the facts certainly indicate that he is.

Mr. Jensen's testimony as an expert is similar to that approved in *Kriegler v. Spokane Merchants' Association*, 111 Wash. 179, 183, 189 P. 1004, 1006 (1920), where the Court said:

G. W. Finney, who testified that he had lived in Odessa for 32 years, had laid out the town site, knew the property in question, had bought and sold property in the town, and knew the value of this particular real estate. Clearly, this witness was competent to testify as to the value of the property.

Mr. Jensen had lived in Lake Jane Estates for 13 years, knew the property in question, had bought and sold property throughout Bonney Lake, and knew the value of his own particular real estate. Equally clearly, he was competent to testify as to the value of his property.

LJE cites to *City of Medina v. Cook*, 69 Wn.2d 574, 578, 418 P.2d 1020, 1022 - 1023 (1966), for the proposition that the valuation of unimproved acreage cannot be determined by comparison to the value of town lots of a fully developed subdivision. In so doing, LJE fails to mention the Court's subsequent decision in *State v. Swarva*, 86 Wn.2d 29,

31, 541 P.2d 982, 984 (1975), where the Court expressly limited the decision in *Medina*. The Court held that it is proper to admit testimony on valuation based on future subdivision into lots where some steps towards development have been taken. That is the situation in the case at bar, where Jensen has already proposed short-platting his lots.

LJE also did not disclose that the reasoning of the *Medina* case was seriously called into question in *Chase v. City of Tacoma*, 23 Wn. App. 12, 15-17, 594 P.2d 642 (1979), where the Court stated:

For a number of reasons the authoritativeness of *Medina* must be questioned. The trial in *Medina* was to the court without a jury. The oral opinion of the trial judge, quoted at 577, 418 P.2d 1020, suggests that his ruling on the developed comparables was based upon his assessment as the trier of fact of the credibility of the evidence; he did not rule that the developed comparables were inadmissible as a matter of evidence. The Supreme Court went much farther, however, than sustaining the trial court on substantial evidence; it laid down a rule of law purporting to disallow evidence in the form of the sale price of developed comparables to show the value of an undeveloped parcel.

The rule is not supported by the authority cited in the opinion. ... The evidence the subject of Nichols' admonition, quoted by the *Medina* court, which a court "cannot be too careful to exclude" is evidence of expected profits from an imagined development scheme, and the like, inadmissible because it is speculative and conjectural. As Nichols suggests, the proper rule is that evidence of potential use of a parcel is admissible to show value provided there is a showing of (1) adaptability of the property to that use and (2) present market demand for the property devoted to that use.

Similar considerations control the admissibility of the sale price of developed parcels to show the value of the undeveloped parcel whose value is in issue. There must be a showing of adaptability of the undeveloped parcel to the use to which the comparable is devoted and a showing that there is present market demand for the undeveloped parcel if developed as the comparable. ...

In reviewing the record we are satisfied that there was sufficient foundation so as to make the evidence regarding the developed comparables admissible and it was properly admitted.

From this analysis, it appears that valuation of land based upon the comparison to developed parcels is appropriate if the land is adaptable to such subdivision. Mr. Jensen's testimony clearly establishes that his property was adaptable to subdivision, and that he had completed virtually all steps to complete the short plats until prevented by the actions of LJE.

F. LJE cites no evidence to suggest that its 2000 survey meets the threshold requirements for admission into evidence.

LJE apparently argues that Jensen's objection to admission of the 2000 survey of LJE members is waived by his counsel's questions to Mr. Brain about the results of that survey, citing to RP 384.¹⁹ What LJE neglects to mention is that the referenced questions to Mr. Brain came after the trial court had already allowed testimony about the results of the survey elicited by LJE over Jensen's objection. (RP 257) A party does

not waive an objection to erroneously admitted evidence by subsequently introducing evidence in an attempt to mitigate the prejudicial effect of the improper evidence. *Taylor v. Cessna Aircraft Co.*, 39 Wn. App. 828, 831, 696 P.2d 28, *review denied*, 103 Wn.2d 1040 (1985); *State v. Watkins*, 61 Wn. App. 552, 558, 811 P.2d 953, 956 (1991).

LJE asserts that any problems with the methodology of a survey go to the weight of the evidence, not its admissibility, citing to *Simon v. Riblet Tramway Co.*, 8 Wn. App. 289, 294, 505 P.2d 1291 (1973).²⁰ That is not what that court said. Rather, the court noted,

[T]he survey appears trustworthy and reliable, published by a reputable society, and without any apparent reason to falsify it. It has relevancy to one of plaintiff's contentions. Consequently, the survey was admissible.

After making this threshold determination about the objectivity and professional quality of the survey, which makes it admissible, the court then stated that the limitations in its sample size go to the weight rather than admissibility.

In the case at bar, there is no evidence that the survey was trustworthy and reliable, published by a reputable society, and without any apparent reason to falsify it. Rather, it was conducted by a member of the

¹⁹ Respondent's brief, p. 47.

²⁰ Respondent's brief, p. 48.

association who has no survey experience or training, and who is an opponent of subdivisions within the plat.

LJE attempts to belittle the federal court cases cited by Jensen regarding the standards for admission of survey evidence, by saying they are not Washington cases (a distinction that it ignores when relying heavily on a Missouri case on the issue of authority to consent to subdivisions). However, the federal court cases cited by Jensen set out well-defined standards for admission of survey evidence which require such “guarantees of trustworthiness” as an expert and objective survey taker using data that is properly gathered and reported, and meeting the standards of accepted surveying and statistical techniques. This is entirely consistent with *Simon’s* threshold requirement that the survey appears trustworthy and reliable, published by a reputable society, and without any apparent reason to falsify it.

RESPECTFULLY SUBMITTED this 15th day of March, 2011.


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WASH. ST. II

CERTIFICATE OF SERVICE

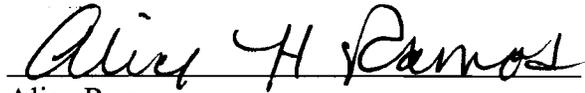
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STATE OF WASHINGTON

I certify that on the date set out below I mailed a ~~true and correct~~ copy of the foregoing REPLY BRIEF OF APPELLANT, to: DEPUTY

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