

Mon 4/18/2011  
11:43 AM

No. 41691-3-II

COURT OF APPEALS DIVISION TWO  
OF THE STATE OF WASHINGTON

---

JOHN R. WYSS  
Plaintiff/Appellant

vs.

GRAYS HARBOR COUNTY  
Defendant/Appellee

---

APPEAL FROM SUPERIOR COURT  
FOR GRAYS HARBOR COUNTY

---

APPELLANT'S OPENING BRIEF

---

Scott E. Stafne, WSBA # 6964  
Attorney for Appellants

Stafne Law Firm  
239 N. Olympic Avenue  
Arlington, WA 98223  
Phone: 360-403-8700  
Fax: 360-386-4005

No. 41691-3-II

COURT OF APPEALS DIVISION TWO  
OF THE STATE OF WASHINGTON

APR 15 2011  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEP. CLERK

---

JOHN R. WYSS  
Plaintiff/Appellant

vs.

GRAYS HARBOR COUNTY  
Defendant/Appellee

---

APPEAL FROM SUPERIOR COURT  
FOR THURSTON COUNTY

---

APPELLANT'S OPENING BRIEF

---

Scott E. Stafne, WSBA # 6964  
Attorney for Appellants

Stafne Law Firm  
239 N. Olympic Avenue  
Arlington, WA 98223  
Phone: 360-403-8700  
Fax: 360-386-4005

 ORIGINAL

**TABLE OF CONTENTS**

I. Introduction .....1

II. Assignment of Error .....2

    Assignment of Error 1 .....2

    Assignment of Error 2 .....3

    Assignment of Error 3 .....3

III. Statement of the Case .....4

    A. Statement of facts if the motion to consolidate is granted  
        .....4

    B. Statement of facts if the motion to consolidate is not  
        granted .....13

IV. Argument .....14

    A. The extent of a superior court's authority to decide  
        administrative appeals is "prescribed by law" .....14

    B. Wyss' illegal subdivision was legitimized as a result of no  
        one ever appealing the final land use decision creating a  
        subdivision pursuant to LUPA .....17

    C. The County, not Hoquiam, is authorized to correct any  
        mistakes in the subdivision process through a writ of  
        mandate filed in Superior Court pursuant to RCW  
        58.17.190 .....18

    D. Washington's policy promoting finality of land use actions  
        required that Wyss's decade old subdivision not be  
        "cancelled" by the county assessor as a favor to the  
        Hoquiam city attorney .....19

    E. The 30 day limitations period for filing an appeal of an  
        assessment decision is jurisdictional. Alternatively, if the

limitations period is a procedural rule it has not been substantially complied with .....	21
F. The policy of finality regarding land use decisions precluded the county assessor from arbitrarily cancelling Wyss's subdivision .....	23
G. This Court should reject the County's invitation to interpret 2006 unpublished decision as invalidating Wyss's subdivision .....	25
H. The judgment of the Grays Harbor Superior Court allowing foreclosure on all of Wyss's property is void .....	26
I. Wyss properly brought a declaratory judgment to determine his rights arising from the consequences of an unappealed land use decision creating an illegal subdivision, etc. ....	30
V. Conclusion .....	32

## TABLE OF AUTHORITIES

### Constitutional Provisions:

Const. Article I, Section 6 .....	15
-----------------------------------	----

### Statutes:

RCW 4.16.160 .....	8, 9
RCW 7.24.010 .....	30
RCW 7.24.020 .....	30
RCW 25.15.460 .....	22
RCW 36.70C (LUPA) .....	<i>passim</i>
RCW 36.70C.030 .....	15, 31
RCW 36.70C.040 .....	1, 15
RCW 58.17.020 (6) .....	6
RCW 58.17.030 .....	6, 9
RCW 58.17.060 .....	9
RCW 58.17.190 .....	<i>passim</i>
RCW 84.64.050 .....	1, 3, 4, 19, 26, 28

**Washington Cases:**

*Chelan County v. Nykreim*, 146 Wash.2d 904, 52 P.3d 1 (2002).....18, 20, 22, 23, 24, 30

*Christensen v. Grant County Hosp. Dist. No.1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004) .....17

*City of Seattle v. Pub. Employment Relations Comm'n*, 116 Wn.2d 923, 928-29, 809 P.2d 1377 (1991) .....22, 23

*Clark County PUB. Util. District No. 1 v Wilkinson*, 139 Wn.2d 840, 991 P.2d 161 (2000) .....20, 24

*Conom v. Snohomish County*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005).....14, 15, 25, 26

*Deschenes v King County*, 83 Wn.2d 714, 717, 521 P. 2d 1181 (1974).....20, 24

*Fay v. Northwest Airlines, Inc.*, 115 Wash.2d 194, 197, 796 P.2d 412 (1990) .....15

*Grundy v. Thurston County*, 155 Wn.2d 1, 7, 117 P.3d 1089, 1092 (2005).....16, 19, 25

*Habitat Watch v Skagit County*, 155 Wash.2d 397, 120 P.3d 56 (2005) .....20, 24

*Hadley v. Maxwell*, 144 Wn.2d 306, 310, 27 P.3d 600 (2001) .....14

*Haynes v Seattle School District*, 111 Wn.2d 250, 758 P.2d 7 (1988) .....25

*Homeowners Solutions, LLC v. Nguyen*, 200 P.3d 743, 148 Wash.App. 545 (2009) .....26

*Household Finance Corp. v Washington*, 40 Wn.2d 451, 244 P.2d 260 (1952) .....25

*Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, 242 P.3d 846, 851 - 853 (2010) .....22

<i>In re Proceedings of King County for Foreclosure of Liens for Delinquent Real Property Taxes for Years 1985 Through 1988</i> , 117 Wash. 2d 77, 811 P.2d 945 (1991) .....	27
<i>In re Proceedings of Pierce County for Foreclosure of Liens for Delinquent Real Property Taxes for Year 1974 and Some Prior Years</i> , 48 Wash. App. 418, 421-4, 739 P.2d 116 (1987) .....	29
<i>Keep Watson Cutoff Rural v. Kittitas County</i> , 184 P.3d 1278, 145 Wn. App. 31 (2008) .....	15
<i>Kupka v. Reid</i> , 50 Wn.2d 465, 467, 312 P.2d 1056 (1957) .....	19
<i>Moller v. Graham</i> , 106 Wash. 205, 207-8, 179 P. 858 (1919) .....	27
<i>Napier v. Runkel</i> , 9 Wn.2d 246, 114 P.2d 534, 137 A.L.R. 175 (1941)...	19
<i>Nickum v. City of Bainbridge Island</i> , 153 Wn.App. 366, 372-9, 223 P.3d 1172 (2009) .....	22
<i>Petta v. Dep't of Labor &amp; Indus.</i> , 68 Wn. App. 406, 409-10, 842 P.2d 1006 (1992) .....	22
<i>Pierce County v. Evans</i> , 17 Wash. App. 201, 204, 563 P.2d 1263 (1977).....	26
<i>Pierce v. King County</i> , 62 Wash.2d 324, 334, 382 P.2d 628 (1963) ..	20, 24
<i>Rosholt v. County of Snohomish</i> , 19 Wash. App. 300, 304, 575 P.2d 726 (1978) .....	26
<i>Samuels Furniture v Department of Ecology</i> , 147 Wn.2d 440, 54 P.3d 1194 (2002) .....	18, 31
<i>Shoemaker v. City of Bremerton</i> , 109 Wn.2d 504, 507, 745 P.2d 858 (1987) .....	17
<i>Skamania County v. Columbia River Gorge Comm'n</i> , 144 Wash.2d 30, 26 P.3d 241 (2001) .....	18, 31

*Stientjes Family Trust v. Thurston County*, 152 Wash.App. 616, note 8, 217 P.3d 379 (2009) .....20, 24

*Thurston County v. Western Washington Growth Management Hearings Board*, 190 P.3d 38, 45, 164 Wash.2d 329 (2008) .....20, 23

*Twin Bridge Marine Park, L.L.C. v. State, Dept. of Ecology*, 162 Wn.2d 825, 175 P.3d 1050 (2008) .....18, 30

*Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash.2d 169, 4 P.3d 123 (2000) .....20, 23, 24

*West v Stahley*, 155 Wn. App. 691; 696-7, 229 P.3d 943 (2010) .....22

*Westcott Homes, LLC v. Chamness*, 146 Wn. App., 735, 192 P.3d 394 (2008) .....22

*Woods v Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007) .....20, 23

*Wyss v City of Hoquiam*, 147 Wash.2d 1025 (2002) .....7

## I. INTRODUCTION

This appeal is the third one brought by John Wyss in this Court of Appeals related to his creation of an illegal subdivision dividing one lot into two lots in 1999. *See* unpublished decision of this Court at Clerk's Papers (CP) pp. 23-4. This appeal is different than Wyss previous unsuccessful appeals because it challenges the rescission of the two lot illegal, but subsequently validated, subdivision a decade later by the Grays Harbor assessor based on an informal request by the Hoquiam city attorney to do so. The city attorney's request claimed that a Grays Harbor Superior Court had invalidated Wyss' illegal subdivision in a case between Wyss and Hoquiam which was brought before the Grays Harbor Court pursuant to its original jurisdiction in 2005, well after LUPA's 21 day limitation period<sup>1</sup> had expired. The purpose of the city attorney's request was to apply a 2007 assessment lien, which had been assessed by the City of Hoquiam against one of the lots in the subdivision, to also cover the other lot so that both could be foreclosed upon imminently<sup>2</sup>.

---

<sup>1</sup> "LUPA" refers to the Land Use Petition Act, RCW Chapter 36.70C. LUPA's 21 day filing requirement to challenge a final land use decisions is set forth in RCW 36.70C.040 (2) and (3).

<sup>2</sup> RCW 84.64.050 requires a three year waiting period before foreclosure of property. By having the assessor rescind the second lot

Wyss claims that the agreement between the Hoquiam city attorney and the Grays Harbor assessor that the 2005 judicial decision by the Grays Harbor rescinded Mr. Wyss illegal subdivision was contrary to law. In both appeals Wyss challenges the subject matter jurisdiction of the superior court to affirm the unlawful dissolution of his subdivision. CP 13, paragraph 2.1, 10, prayer for relief.

## **II. ASSIGNMENTS OF ERROR**

ASSIGNMENT OF ERROR 1. The Superior Court erred in holding that it had authority to approve a foreclosure which amounted to a collateral attack on Wyss' illegal, but valid, subdivision.

### **ISSUES RELATED TO ASSIGNMENT OF ERROR 1**

A. Has the legislature divested Superior Courts from jurisdiction to decide cases which constitute a collateral attack on a final land use decision after LUPA's limitation period expires?

B. If so, to what extent, if any, did the Grays Harbor Court have jurisdiction to sanction a foreclosure based on a dissolution of a subdivision that did not comply with LUPA or RCW 58.17.190?

---

the City of Hoquiam was able to foreclose on both lots waiting until three years expired before serving the notice of delinquency.

ASSIGNMENT OF ERROR 2. The Superior Court erred in holding that the Hoquiam city attorney and the Grays Harbor assessor had authority to rescind Wyss' subdivision in 2009 so that the City could apply its abatement lien to all of Wyss' lots, rather than the lot which had been identified during the lien proceedings.

#### ISSUES RELATED TO ASSIGNMENT OF ERROR 2

A. Did the Hoquiam City Attorney and Grays Harbor County Assessor have authority to rescind John Wyss' two lot subdivision in order to allow an early foreclosure on both of the lots in the Wyss' subdivision?

B. Has the legislature prohibited the administrative dissolution of a subdivision where the procedures set forth in LUPA and RCW 58.17.190 are not followed?

ASSIGNMENT OF ERROR 3: The Superior Court's Order granting foreclosure of all of Wyss's property was void because it expanded the property the foreclosure was applied to during the three year expiration period established by RCW 84.64.050.

#### ISSUE RELATED TO ASSIGNMENT OF ERROR 3:

Was the order granting foreclosure of all of Wyss property void when the abatement lien only applied to only one of Wyss's lots in a subdivision which existed on the county tax rolls from 1999 - 2009,

but was expanded to both lots of his subdivision during the three year expiration period set forth in RCW 84.64.050?

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

#### A. Statement of facts if the motion to consolidate is granted.

This statement of facts is substantially identical to the one which Wyss has presented to this Court in his Opening Brief related to appeal #41298-5-11 (Appeal #1). The record in this case contains less materials than the does the record in Appeal #1. However, as will be shown, the additional documents in that case do not have a material impact on the outcome of these cases because Grays Harbor has admitted the operative facts of Appeal #1 in its memorandum before the Superior Court in this case. CP, pp. 13:20 - 14:25.

The questions of law to be applied in both cases are virtually identical. They include: Does a City or County retain any power to alter a subdivision other than through LUPA or by the special mandate provision set forth in RCW 58.17.190, which sets forth specific procedures a County must follow to undo an improperly created subdivision?

Washington has a strong policy favoring the finality of land use decisions. This policy is reflected in both the State's land use statutes and the decisions of Washington Courts generally. *See infra*. Because

of the short limitations periods established by land use statutes and their substantive affect on the ability of a Superior Court to later alter "final land use decisions" through an exercise of original or appellate jurisdiction this statement of facts will focus primarily upon the timing of the land use decisions which occurred in this case.

On **December 2, 1998** Eleanor V. Mc Carty transferred to John Wyss "the southerly 84 feet of Lots 7 & 8 block 8, Karrs Hill Addition to the Town, now City of Hoquiam as per plat recorded in Volume 1 of Plats, page 123 records of Grays Harbor County ...". Clerk's Papers in appeal 41298-5-II (#1 CP) p. 134. On September 21, 1999 Wyss transferred the "North 40 ' of the south 84 ft. of lots 7 & 8, Block 8, Karr's Hill" to his son James Beamer Wyss. Assessor Cherri Rose-Konschau testified in her declaration her "office assigned tax parcel No. 053800800703 to this parcel. #1 CP, p. 59:19 - 24.

At all material times, RCW 58.17.190, provided:

"The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove their files or records of the unapproved plat, or dedication of record."

For purpose of this appeal Wyss asserts that the legal result of the County's partitioning his lot into two lots was the creation of an illegal two lot subdivision<sup>3</sup>.

On **December 8, 1999** Hoquiam issued a decision condemning an apartment building located on parcel 053800800702 of Wyss's two lot subdivision. Wyss attempted to appeal that decision to Superior Court, but the Court held on **March 23, 2000** that LUPA applied to the city's abatement decision. The Court found Wyss' failure to file a land

---

<sup>3</sup> In Wyss's second appeal to this Court, *City of Hoquiam v Wyss*, No 34048-8-II, Judge Pennoyer held, with Chief Judge Houghton and Judges Bridgewater concurring, that Wyss's subdivision was illegal:

A. Illegal Subdivision

The trial court properly found that the deed from Wyss to James was illegal. Wyss's transfer of the north 40 feet effectively divided the property and created a short subdivision. RCW 58.17.020(6). Therefore, Wyss had to comply with local regulations including Chapter 9.34 of the Hoquiam Municipal Code, before dividing his property. RCW 58.17.030; see CP at 214. Because the short subdivision he attempted to transfer was not created legally, the transfer was illegal. See RCW 58.17.030.

A. Illegal Subdivision

The trial court properly found that the deed from Wyss to James was illegal. ***Wyss's transfer of the north 40 feet effectively divided the property and created a short subdivision. RCW 58.17.020(6).*** Therefore, Wyss had to comply with local regulations including Chapter 9.34 of the Hoquiam Municipal Code, before dividing his property. RCW 58.17.030; see CP at 214. Because the short subdivision he attempted to transfer was not created legally, the transfer was illegal. See RCW 58.17.030. [Emphasis Supplied]

use petition within 21 days of the City's abatement decision barred judicial review.

On **April 5, 2002** this Court of Appeals affirmed the Superior Court's holding that LUPA's limitations period barred Wyss's challenge to the City Council's land use decision condemning the building which existed on parcel #053800800702. # 1 CP. pp 31 - 34. Wyss sought review of this Court's unpublished decision in the Supreme Court. Review was denied. *Wyss v City of Hoquiam*, 147 Wash.2d 1025 (2002).

Wyss next turned to the United States District Court for the Western District of Washington **in 2003** to secure relief. # 1CP pp 36 - 47. Wyss' complaint contained the following causes of action (1) deprivation of home and property without compensation; (2) denial of due process and (3) physical invasion and the taking of plaintiff's property. # 1 CP 37 - 38. **In addition to defending itself, Hoquiam for the first time sought affirmative relief against Wyss.** "The City argues John Wyss's conveyance of a portion of the property was an unlawful subdivision of the property and the court should nullify the conveyance". # 1CP p. 38:7-8. Ultimately, the District Court granted summary judgment in favor of Hoquiam with regard to Wyss' claims. However, the Court dismissed Hoquiam's request to nullify Wyss'

transfer of one lot in the illegal subdivision to his son because this claim involved a matter of state property law. # 1 CP 46 - 47.

Hoquiam then brought an action against Wyss to nullify the transfer of one of the subdivision's lots into his son's name. On **October 17, 2006** the Grays Harbor Superior Court entered a summary judgment granting a

"Declaratory Judgment that the purported transfer of a portion of the property located at 314 Lincoln Street, Hoquiam, Washington, to wit: the Northerly 40 feet of the Southerly 84 feet of lots 7 and 8, Karr's Hill Addition to the City of Hoquiam is enjoined, declared unlawful and invalid, and Defendants are barred from attempting to transfer a portion of said realty without first complying with Title 9 of the Hoquiam Code." X 1 CP., p. 7:15 - 20.

Wyss appealed the Superior Court's decision. On **December 5, 2006** this Court affirmed that ruling in an unpublished decision. # 1 CP pp. 53 - 58. This Court held that Wyss' actions created an illegal subdivision. # 1 CP. p 56. In response to Wyss' argument that Hoquiam's suit was time barred, this Court held (without any consideration of LUPA or RCW 58.17.190) that no statute of applications was applicable to the City of Hoquiam with regard to their claims against Wyss.

"C. The statute of limitations does not bar the City's claim because the statute of limitations does not apply to actions 'in the name of the benefit of the state' RCW 4.16.160. Municipal actions are brought 'for the

benefit of the state' when those actions arise out of powers traceable to the sovereign powers of the state that have not been delegated to the municipality. [cite] The focus of the cases interpreting RCW 4.16.160 has not been on the municipal conduct's effect, but on its nature and character. [cites]

The power to regulate platting is traceable to the state's sovereign power. [cite] In Washington the legislature has effectively designated platting issues to the municipalities. RCW 58.17.030 .060 (1). Therefore because the City was acting for the state's benefit by enforcing the short plat regulations, the declaratory judgment action to void the deed was not time barred because no statute of limitations applied. RCW 4.16.160<sup>4</sup>

It is important to note that neither the decision of the Superior Court nor this Court explicitly states that it is rescinding the illegal subdivision which Wyss created on **September 21, 1999** and which was never appealed pursuant to the provisions of LUPA or RCW 58.17.190 or the appeal provisions of Hoquiam's ordinance.

On **March 12, 2007** the Hoquiam City Council passed Resolution No. 2007-06. Section 2 of that resolution provided the "charge of \$25,988.00 shall be assessed against the property at 314 Lincoln Street ... (**Parcel number 53800800702**)". [Emphasis Supplied, # 1 CP 90:9-23]

---

<sup>4</sup> Although this Court's analysis of the statute of limitations may apply to limitations statutes generally, the law appears clear it does not apply to LUPA's jurisdictional limitations period. *See infra*.

On **April 24, 2007** Hoquiam certified the cost of tearing down Wyss' house (approximately \$26,000.00 without interest) as a lien on the tax parcel 53800800702. *The City did not certify the lien applied to the second tax parcel in the subdivision (lot 53800800703).* CP 124: 13 - 22; 145 - 147. Wyss stopped paying his taxes on the lot to which the abatement lien applied, but religiously paid his taxes on the second parcel in the subdivision. The lien continued to apply *only to parcel lot 53800800702* from 2007 until March of 2009, when the subdivision was informally dissolved by the County Assessor.

Hoquiam has adopted the Uniform Code for the Abatement of Dangerous Buildings. CP, p 154. Section 906 of that Code provides:

"The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within 30 days after the assessment is placed on the assessment roll as provided herein. Any appeal from a final judgment in such proceeding must be perfected within 30 days after the entry of such judgment." CP 151.

Neither Wyss nor the County appealed the demolition assessment adjudication in 2007.

Almost two years later, on **March 11, 2009**, Hoquiam, through its attorney Steven R. Johnson, wrote the Grays Harbor Assessor, Ms. Cherri Rose-Konshu, a letter which stated:

"Dear Ms. Rose-Konshu:

In 2007, the City of Hoquiam recorded on the assessment roll a lien for costs associated with the abatement of a dangerous building located at 314 Lincoln Street, Hoquiam, Washington. The assessment was in the amount of \$25,998.00. Apparently, the Assessor's office still shows this property as being divided into two tax parcels. ***Mr. Wyss, the owner, had made an illegal subdivision of this property*** by quitclaiming a portion of his lot to his then six year old son. The City of Hoquiam was forced to file a lawsuit against Mr. Wyss to seek declaratory judgment that the transfer to his son was unlawful and invalid. On October 17, 2005, Judge Mark McCauley granted the City's Motion for Summary Judgment, which among other things, declared the transfer to be invalid.

Please find enclosed a copy of the City's Motion for Summary Judgment, and a conformed copy of Judge McCauley's Order Granting Summary Judgment to the City.

Thank you for your cooperation in this matter. [Emphasis Supplied]" # 1 CP p. 178

On **March 27, 2009** the County sent Wyss a Corrected Statement. Wyss Declaration, #1 CP 156 - 157. Handwritten on the statement was the following: "\* Per a court order - the taxes for 2006, 2007, 2008, 2009 tax years have been added to parcel 053800800702" and "\*Parcel has been deleted". Id. On April 7, 2009 Wyss wrote a letter to the treasurer of Grays Harbor requesting the Treasurer "fully explain your actions and your authority to take what actions were taken to result in the corrected statement." #1 CP 159. Grays Harbor County responded:

"Dear Mr. Wyss:

In response to your letter inquiring why you received a corrected statement on the parcel listed above, I have enclosed a copy of the letter received by Grays Harbor County from the City of Hoquiam explaining the subdivision of the parcel had been deemed unlawful and invalid by Judge Mark McCauley.

With that information, *Grays Harbor rescinded the subdivision* and mailed you a corrected statement with the full assessed value being placed on one parcel.

If you have further questions, please contact me.

Sincerely,

Debra Mattson,  
Collections/Foreclosure  
Grays Harbor County Treasurer's Office" #1 CP 162.

Mr. Wyss brought a lawsuit against Grays Harbor County in Thurston County Superior Court seeking a declaratory judgment that the Assessor had no legal authority to rescind Wyss' subdivision. Wyss also asked for injunctive relief requiring the restoration of the subdivision.

The County moved for a summary judgment dismissing Wyss case. This motion was granted. #1 CP 211 - 214. Wyss appealed. As previously stated that appeal is currently pending before this Court as Appeal # 41298-5II.

While this appeal was pending Grays Harbor brought an action to foreclose on both lots in Wyss' subdivision. The Grays Harbor Superior Court issued an order which allowed the foreclosure of both

lots. Wyss has also appealed that decision to this Court based on the same contentions as he is arguing in Appeal 1; namely the foreclosure judgment is void as the decision which created the two lot subdivision cannot be collaterally attacked at this point.

From the time the illegal subdivision was created (in 1999) until the lots were administratively combined on or about March 16, 2009<sup>5</sup> the Wyss subdivision appeared as the short plat subdivision on the County tax rolls. See #1 CP, pp. 138 - 139, which is hereby incorporated herein by this reference. A copy of these documents are also attached as Appendix 1 hereto.

B. Statement of facts if the motion to consolidate is NOT granted.

Most of the facts set forth above with regard to the appeal currently pending as Appeal no. 41298-5-II and referenced in the Clerk's papers related to that appeal were agreed to by the County in superior court action which gives rise to this appeal. *See e.g.* County Memorandum in *In Re: The proceedings for delinquent real property for real property taxes for the years 2007-2010, and some prior years*, Grays Harbor Superior Court Cause No. 10-823-0 at CP 13:20-15:25.

---

<sup>5</sup> See Declaration of Cherri Rose-Konschu, including exhibits. # 1CP 59 - 61; Declaration of John R. Wyss, #1 CP 31 pp 124:13 - 22 and exhibits depicting plat map at # 1 CP pp. 138 - 139.

Specifically, the County admits that this Court held Wyss created an illegal subdivision in its 2006 unpublished decision. #2 CP, 14:25-15:10. Further, the County states:

"[b]y letter dated March 11, 2009, the City notified the Grays Harbor County Assessor that Grays Harbor Superior Court invalidated Wyss purported subdivision by Quit Claim Deed. In response, the assessor cancelled tax parcel number 053800800702 and listed the Plaintiff's [Wyss's] property as a single lot under the original tax parcel 053800800702. That parcel is the subject of the parcel foreclosure proceeding".

Although Wyss does not accept the County's position that this Court's decision or the Superior Court's decision specifically voided the subdivision for the reasons stated herein, Wyss asks this Court to note that the County admits that in 2009 the assessor simply cancelled the subdivision and the County attempted to foreclose on all of Wyss's property although the abatement lien originally applied to only one lot in the subdivision during the years 2007, 2008, and part of 2009.

#### IV. ARGUMENT

A.) The extent of a superior court's authority to decide administrative appeals is "prescribed by law".

The standard of review for a summary judgment is de novo. *Hadley v. Maxwell*, 144 Wn.2d 306, 310, 27 P.3d 600 (2001). Whether a court may exercise jurisdiction is a question of law subject to de novo review. *Conom v. Snohomish County*, 155 Wn.2d 154, 157,

118 P.3d 344 (2005). Appeals of final land use decisions under RCW Chapter 36.70C invoke the Superior Courts' appellate jurisdiction, which is limited "as may be prescribed by law". Const. Art. 1, Sec. 6. *See also Conom v. Snohomish County, supra.; Keep Watson Cutoff Rural v. Kittitas County*, 184 P.3d 1278, 145 Wn. App. 31 (2008).

When hearing appeals all statutory jurisdictional requirements, especially those relating to timely filing and service, must be met before the Superior Court's appellate jurisdiction can properly be invoked under LUPA, *Conom*, p. 8, n. 2, and under appellate statutes generally. *Fay v. Northwest Airlines, Inc.*, 115 Wash.2d 194, 197, 796 P.2d 412 (1990).

RCW 36.70C.040 (1) and (2) statutorily bar superior courts from hearing appeals of land use appeals which have not timely filed. In this regard RCW 36.70C.040 (1) provides LUPA: "shall be the exclusive means of judicial review of land use decisions...". This language precludes Superior Courts from exercising original jurisdiction to undo the consequences of final land use decisions.

However, LUPA does not apply to writs of mandate or prohibition. RCW 36.70C.030(1)(b). Thus, the County Attorney was empowered by the legislature to bring a mandate action to undo

Wyss's subdivision pursuant to RCW 58.17.190. But the County Attorney has never chosen to use this statute.

In other words, the legislature provided two statutory avenues to obtain appellate relief from the creation of an illegal subdivision in violation of a local municipality's ordinances. Those statutory avenues are LUPA and RCW 58.17.190. It is significant that both require the County be a party to any Superior Court LUPA appeal or writ of mandate to correct a subdivision error recorded in violation of municipal ordinances. Wyss, of course, had no authority under the law to undo what had become a valid subdivision in 1999.

Here the City chose in 2005 to sue only Wyss with regards to his conveyance of land to his son pursuant to the superior court's original jurisdiction. If the City wanted to undo the subdivision the County was a necessary party to any appeal or writ action seeking such relief. Because Hoquiam's case against Wyss did not include the County as a defendant and was not timely filed under LUPA the Superior Court of Grays Harbor did not have any original or appellate jurisdiction to consider and void the subdivision created as a result of the auditor's land use decision. *See e.g. Grundy v. Thurston County*, 155 Wn.2d 1, 7, 117 P.3d 1089, 1092 (2005) (County a necessary party to actions regarding land use decisions).

B. Wyss' illegal subdivision was legitimized as a result of no one ever appealing the final land use decision creating a subdivision pursuant to LUPA.

It is undisputed that Wyss' actions created an illegal subdivision. This Court's finding of fact and conclusion of law regarding the creation of an illegal subdivision in 1999 should have been given a res judicata and/or collateral estoppel effect by the County in 2009 when its assessor was asked to cancel the subdivision. Res judicata, of course, precludes relitigation of the same claim or cause of action, whereas collateral estoppel precludes relitigation of the same issue. *Christensen v. Grant County Hosp. Dist. No.1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004) (citation omitted). Res judicata precludes relitigation of "all issues which might have been raised and determined" in a prior case, whereas collateral estoppel precludes relitigation of "only those issues actually litigated and necessarily determined." *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987). In its previous unpublished decision this Court established as a matter of law that the County assessor created an illegal subdivision.

But the City never argued, nor could it have argued in 2005 that the subdivision was void as this argument was required to have been advanced in a LUPA appeal brought in 1999. Under Washington law the Hoquiam City Attorney could not just ask the assessor to cancel the subdivision

because LUPA is the exclusive means by which a final land use decision can be appealed by a municipality or governmental agency, other than a county pursuant to RCW 58.17.190. *See e.g. Twin Bridge Marine Park, L.L.C. v. State, Dept. of Ecology*, 162 Wn.2d 825, 175 P.3d 1050 (2008); *Samuels Furniture v Department of Ecology*, 147 Wn.2d 440, 448-461, 54 P.3d 1194 (2002); *Chelan County v Nykreim*, 146 Wn.2d 904, 917 - 938, 52 P.3rd 1 (2002); *Skamania County v. Columbia River Gorge Comm'n*, 144 Wash.2d 30, 26 P.3d 241 (2001).

C. The County, not Hoquiam, is authorized to correct any mistakes in the subdivision process through a writ of mandate filed in Superior Court pursuant to RCW 58.17.190.

RCW 58.17.190 provides:

"The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove their files or records of the unapproved plat, or dedication of record."

It is the County, not Wyss, which legitimized the subdivision in violation of Hoquiam's ordinances. The legislature has determined that it is the County which must seek to reverse its mistake through pursuing a writ of mandate. No statute gives a Superior Court original jurisdiction to hear

a claim by Hoquiam against Wyss to rescind a subdivision approximately five years after it was created. *Grundy v. Thurston County*, supra.

RCW 58.17.190 makes clear the legislature intended that mistakes by the auditor would be corrected via a judicial writ of mandate; not by a letter from a city attorney to an assessor asking her to "cancel" a decade old subdivision so that the City can instantly apply an abatement lien to an additional lot and thereby get around the three year waiting requirement for foreclosing on land established by RCW 84.64.050<sup>6</sup>.

D. Washington's policy promoting finality of land use actions required that Wyss's decade old subdivision not be "cancelled" by the county assessor as a favor to the Hoquiam city attorney.

The failure by anyone to ever file a LUPA appeal or writ of mandate pursuant to RCW 58.17.190 has legitimized Wyss' subdivision as a result of Washington's longstanding policy favoring

---

<sup>6</sup> RCW 84.64.050 requires that three years pass before property can be foreclosed upon. The record establishes that at the time the abatement lien was placed on parcel number 053800800702 (April 2007 ) it was one lot in a two lot subdivision. CP 124:13 - 22; 138 - 139; 156 - 166. Further the record establishes that the lien was applied to the second lot by illegally rescinding the subdivision in 2009 thus providing a pretext to allow the second lot to be foreclosed upon in less than three years. To the extent the initial description was inadequate it does not provide a legitimate basis for the foreclosure which the Superior Court of Grays Harbor recently allowed to proceed. *Kupka v. Reid*, 50 Wn.2d 465, 467, 312 P.2d 1056 (1957) (citing *Napier v. Runkel*, 9 Wn.2d 246, 114 P.2d 534, 137 A.L.R. 175 (1941)).

the finality of land use decisions. See e.g. *Woods v Kittatas County*, 174 P.2d 25, 30 - 35, 162 Wn.2d 597 (2009); *Chelan County v Nykreim*, 146 Wn.2d at 917 - 938; *Wenatchee Sportsmen v Ass'n v. Chelan County*, 141 Wash.2d 169, 4 P.3rd 123 (2000). In *Thurston County v. Western Washington Growth Management Hearings Board*, 190 P.3d 38, 45, 164 Wash.2d 329 (2008) the Supreme Court explained part of the reasoning behind Washington's strong finality policy by reiterating "[i]f there were not finality, no owner of land would ever be safe in proceeding with development of his property."<sup>7</sup>

As Division One observed in *Stientjes Family Trust v. Thurston County*, 152 Wash.App. 616, note 8, 217 P.3d 379 (2009):

Our Supreme Court has held that " even illegal decisions must be challenged in a timely, appropriate manner." *Habitat Watch [v Skagit County]*, 155 Wash.2d [397] at 407, 120 P.3rd 56 (citing *Pierce v. King County*, 62 Wash.2d 324, 334, 382 P.2d 628 (1963)). **Thus, challenges brought after the expiration of deadlines for filing local administrative appeals or after LUPA's 21-day time period for filing an appeal constitute impermissible collateral attacks.** *Habitat Watch*, 155 Wash.2d at 410-11, 120 P.3rd 56. See also, [ *Chelan County v* ] *Nykreim*, 146 Wash.2d at 933, 52 P.3rd 1; *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash.2d 169, 181, 4 P.3rd 123 (2000). [Emphasis Supplied]

---

<sup>7</sup> This quote was taken from *Deschenes v King County*, 83 Wn.2d 714, 717, 521 P. 2d 1181 (1974) which was overruled in part by *Clark County PUB. Util. District No. 1 v Wilkinson*, 139 Wn.2d 840, 991 P.2d 161 (2000)

Washington's strong land use policies favoring finality and decisions interpreting that policy should be followed in this case so as to disallow an assessor's informal cancellation of a decade old subdivision.

E. The 30 day limitations period for filing an appeal of an assessment decision is jurisdictional. Alternatively, if the limitations period is a procedural rule it has not been substantially complied with.

Section 906 of the Uniform Code for the Abatement of Dangerous Buildings provides:

The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced *within 30 days after the assessment is placed on the assessment roll as provided herein*. Any appeal from a final judgment in such proceeding must be perfected within 30 days after the entry of such judgment. [Emphasis Supplied]

It is not disputed the abatement assessment was adjudicated to apply to only one lot in Wyss's two lot subdivision. It is also undisputed that no one appealed this assessment within 30 days after the entry of the assessment judgment. Just prior to expiration of the three year delinquency period prior to being allowed to foreclose on this assessed property the city attorney asks the county assessor to undo the subdivision on the tax rolls so that the county could foreclose upon a bigger res.

The County, like Wyss, was required to appeal the assessment lien attached to the one lot of Wyss's subdivision within 30 days if it thought it should be entitled to foreclose on a larger res. This never happened and therefore the City is estopped from collaterally attacking its own decision. *See e.g. County v Nykreim*, 146 Wn.2d 904, 917 - 938, 52 P.3d 1 (2002). *Cf. West v Stahley*, 155 Wn. App. 691; 696-7, 229 P.3d 943 (2010); *Nickum v. City of Bainbridge Island*, 153 Wn.App. 366, 372-9, 223 P.3d 1172 (2009) (Land use appeal procedures must be followed).

Our Supreme Court recently indicated that as a general matter substantial compliance with procedural requirements requires meeting statutory deadlines. *Humphrey Industries, Ltd. v. Clay Street Associates, LLC*, 242 P.3d 846, 851 - 853 (2010).

[S]ubstantial compliance with a statutory deadline, including a specified time such as that contained in RCW 25.15.460, is impossible-one either complies with it or not. *See Pet. for Review at 9* (citing *City of Seattle v. Pub. Employment Relations Comm'n*, 116 Wn.2d 923, 928-29, 809 P.2d 1377 (1991); *Westcott Homes, LLC v. Chamness*, 146 Wn. App., 735, 192 P.3d 394 (2008); *Petta v. Dep't of Labor & Indus.*, 68 Wn. App. 406, 409-10, 842 P.2d 1006 (1992))

*Id.* at 151.

In *City of Seattle v Pub. Employment Relations Comm'n (PERC)*, 116 Wn.2d 923, 928, 809 P.2d 1371 (1991) the Supreme Court stated substantial compliance requires "actual compliance in respect to the substance essential to every reasonable objective of [a] statute." In this case a reasonable objective of the ordinance was to have an appeal perfected within 30 days. That reasonable objective was not achieved as no appeal of the abatement assessment judgment was ever perfected.

F.) The policy of finality regarding land use decisions precluded the county assessor from arbitrarily cancelling Wyss's subdivision.

The failure by anyone to timely file a LUPA appeal or writ of mandate pursuant to RCW 58.17.190 has legitimized Wyss' subdivision as a result of Washington's longstanding policy favoring the finality of land use decisions. See e.g. *Woods v Kittitas County*, 174 P2d 25, 30 - 35, 162 Wn.2d 597 (2009); *Chelan County v Nykreim*, 146 Wn.2d 904, 917 - 938, 52 P.3rd 1 (2002); *Wenatchee Sportsmen v Ass'n v. Chelan County*, 141 Wash.2d 169, 4 P.3rd 123 (2000). In *Thurston County v. Western Washington Growth Management Hearings Board*, 190 P.3d 38, 45, 164 Wash.2d 329 (2008) the Supreme Court explained part of the reasoning behind Washington's strong finality policy by reiterating "[i]f there were

not finality, no owner of land would ever be safe in proceeding with development of his property."<sup>8</sup>

As Division One observed in *Stientjes Family Trust v. Thurston County*, 152 Wash.App. 616, note 8, 217 P.3d 379 (2009):

Our Supreme Court has held that " even illegal decisions must be challenged in a timely, appropriate manner." *Habitat Watch [v Skagit County]*, 155 Wash.2d [397] at 407, 120 P.3rd 56 (citing *Pierce v. King County*, 62 Wash.2d 324, 334, 382 P.2d 628 (1963)). Thus, challenges brought after the expiration of deadlines for filing local administrative appeals or after LUPA's 21-day time period for filing an appeal constitute impermissible collateral attacks. *Habitat Watch*, 155 Wash.2d at 410-11, 120 P.3rd 56. See also, [ *Chelan County v ] Nykreim*, 146 Wash.2d at 933, 52 P.3rd 1; *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash.2d 169, 181, 4 P.3rd 123 (2000).

The legislature provided two statutory avenues to obtain relief from the creation of an illegal subdivision in violation of a local municipality's ordinances. Those statutory avenues are LUPA and RCW 58.17.190. Both require the County be a party to any Superior Court appeal or writ of mandate to correct a subdivision error recorded in violation of municipal ordinances.

Here the City chose to sue only Wyss with regards to its complaints about the auditor's final land use decision, *i.e.* subdivision, approved by the

---

<sup>8</sup> This quote was taken from *Deschenes v King County*, 83 Wn.2d 714, 717, 521 P. 2d 1181 (1974) which was overruled in part by *Clark County PUB. Util. District No. 1 v Wilkinson*, 139 Wn.2d 840, 991 P.2d 161 (2000)

County. Wyss had no power to undo the subdivision. The County was a necessary party to any appeal or writ action seeking such relief. *Grundy v. Thurston County*, supra.

Additionally, Hoquiam chose to apply its abatement lien on only one of Wyss's lots and left it there until 2009, long after the 30 day appeal period had expired. Hoquiam and Grays Harbor are not exempt from the rules they require citizen's to play by.

G.) This Court should reject the County's invitation to interpret 2006 unpublished decision as invalidating Wyss's subdivision.

The County invites this Court to declare that the 2005 decision by the Grays Harbor County Superior Court exercising its original jurisdiction over Wyss nullified the subdivision created by the County and that this Court upheld that ruling. This Court should not do so for the same reasons the judiciary construes statutes in a manner which makes them consistent with the separation of powers. COMPARE *Haynes v Seattle School District*, 111 250, 254, 758 P.2d 7 (1988) with *Household Finance Corp. v Washington*, 40 Wn.2d 451, 455- 458, 244 P.2d 260 (1952). The County's invitation should be rejected because it asks this Court to assume the Superior Court intended to exercise original jurisdiction over a land used decision in a manner the legislature specifically prohibited. *Conom v Snohomish County*,

supra., *Cf. Wesley v. Schneckloth*, 55 Wn.2d 90, 346 P.2d 658 (1959). Further, it invites this Court to hold it affirmed the Superior Court's usurpation of power in violation of LUPA when this Court never stated this was what it intended.

H.) The judgment of the Grays Harbor Superior Court allowing foreclosure on all of Wyss's property is void.

Jurisdiction for a foreclosure pursuant to RCW 84.64.050 is dependent on compliance with the statute. *Rosholt v. County of Snohomish*, 19 Wash. App. 300, 304, 575 P.2d 726 (1978). The failure to comply with statutory provisions relating to the content and manner in proceedings to collect delinquent taxes leaves the court without subject matter jurisdiction over the tax foreclosure proceeding and renders void any foreclosure sale and tax deed issued pursuant thereto. *Pierce County v. Evans*, 17 Wash. App. 201, 204, 563 P.2d 1263 (1977); *Cf. Homeowners Solutions, LLC v. Nguyen*, 200 P.3d 743, 148 Wn.App. 545 (2009) (Holding County had no authority to foreclose on demolition lien until after a five delinquency. This period was later amended to three years.)

It is undisputed that the 2007 demolition assessment which is the subject of this appeal was applied *only* to parcel #053800800702, which consisted of *only* the real estate described as "Karrs Hill

Southerly 84 feet *less North 40 feet* of lots 7 & 8 Block 8". This was the only res to which the abatement lien attached as a result of an administrative hearing held in 2007. CP 37-45. But the County ultimately foreclosed upon "Karrs Hill Sly 84' of lots 7 and 8 block 8". This was a different and larger res. As the property description with regard to which the foreclosure was applied in 2009 is different than the property description to which the demolition lien was assessed in 2007, the superior court's order is void with regard to the larger res. The superior court had no subject matter jurisdiction to allow the tax foreclosure to proceed on both lots in Wyss's subdivision when the assessment lien which was adjudicated, not appealed, and only assessed by the county to only one lot in the two lot subdivision. *Moller v. Graham*, 106 Wash. 205, 207-8, 179 P. 858 (1919) ("The fact that the property may have appeared on the tax rolls for subsequent years as Bowman's Plat would not modify the requirement that the description upon the tax rolls and the description in the published summons must be the same for the years for which the delinquent taxes are being foreclosed.") *See also In re Proceedings of King County for Foreclosure of Liens for Delinquent Real Property Taxes for Years 1985 Through 1988*, 117 Wash. 2d 77, 811 P.2d 945 (1991) (An accurate property description is necessary for a Superior

Court to acquire the subject matter jurisdiction over the res necessary to approve a tax sale.)

Another independent reason the foreclosure should not be allowed to apply to the second lot in Wyss's subdivision is that he paid his taxes on that parcel from 2007 through 2009. In 2009 the County assessor illegally dissolved his subdivision so Hoquiam could foreclose on both his lots in 2010. As Wyss was not delinquent with regard to his payment of taxes on lot 053800800703 the County had no statutory authority to foreclose on this property and the superior court had no subject matter jurisdiction to allow foreclosure on this property as it had not been delinquent for three years when the County foreclosed upon it. *See* RCW 84.64.050, which provides in pertinent part:

***After the expiration of three years from the date of delinquency***, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on the property to the county for all years' taxes, interest, and costs: PROVIDED, That the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

*See also In re Proceedings of Pierce County for Foreclosure of Liens for Delinquent Real Property Taxes for Year 1974 and Some Prior Years*, 48 Wash. App. 418, 421-4, 739 P.2d 116 (1987).

In summary, the City of Hoquiam and Grays Harbor were not entitled to change the amount of property the abatement lien applied to during the three years prior to the sale. *Id.* Indeed under the City's own ordinances the description of the property assessed could not be changed after the 30 day appeal period expired with regard to the assessment.

A letter from Hoquiam's city attorney asking the county assessor to dissolve the a subdivision so as to apply an abatement lien to more property over two years after the assessment decision has been finalized is not a substitute procedure for the appeal procedure established by the above ordinance or for LUPA's statutory appeal procedures discussed earlier or the for the County Attorney timely seeking a writ of mandate set forth in RCW 58.17.190. Washington is supposedly a government which follows laws; not one in which government officials grant favors to one another at the expense of the legal rights of its citizens.

I.) Wyss properly brought a declaratory judgment to determine his rights arising from the consequences of an unappealed land use decision creating an illegal subdivision., etc.

RCW 7.24.010 provides:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

RCW 7.24.020 provides:

A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Washington courts have frequently made decisions establishing that persons can seek a declaratory judgment regarding how various land use statutes affect their land pursuant to the Declaratory Judgment Act (DJA), RCW 7.24. See e.g., *Chelan County v. Nykreim*, 146 Wash.2d 904, 933, 52 P.3d 1 (2002) (Declaratory judgment action concerning LUPA's action to a County's ministerial boundary line adjustment decision); *Twin Bridge Marine Park, L.L.C. v. State, Dept. of Ecology*, 162 Wn.2d 825, 175 P.3d 1050 (2008) (Declaratory

judgment action regarding application of LUPA and Shorelines management Act to land use); *Samuels Furniture v Department of Ecology*, 147 Wn.2d 440, 448-461, 54 P.3d 1194 (2002) (Same); *Skamania County v. Columbia River Gorge Comm'n*, 144 Wash.2d 30, 26 P.3d 241 (2001) (Declaratory judgment action involving Washington's strong policy of the finality of land use decisions interplay with federal statute.)

No statute that applies in this case suggests that the legislature contemplated persons in Wyss's position should not be able to obtain a declaratory judgment. For example, both the language of LUPA and the Declaratory Judgment Act indicate that Wyss can obtain a declaratory judgment regarding his rights and status regarding his subdivision on the county tax rolls from 1999 through 2009 and its present status.

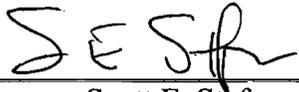
RCW 36.70C.030(1) makes clear that LUPA replaces the writ of certiorari challenging final land use decisions. Because the legislature could have, but did not, elect to include “declaratory judgments” in its listing of what LUPA replaces, this Court must give effect to the plain meaning of the statute. Similarly, the legislature could have, but did not, amend the declaratory judgment statute when it adopted LUPA. Thus, the DJA purposes still apply when courts are

asked to review the effect of already final and unappealed land use decisions.

#### V. CONCLUSION

This Court should reverse the decision of the superior court authorizing the sale of tax parcel 053800800702 as it exists now as a result of the assessor's illegal dissolution of Wyss's subdivision for all of the reasons previously stated herein.

Dated this 14<sup>th</sup> day of April, 2011.

  
\_\_\_\_\_  
Scott E. Stafne,  
WSBA #6964

# Appendix 1

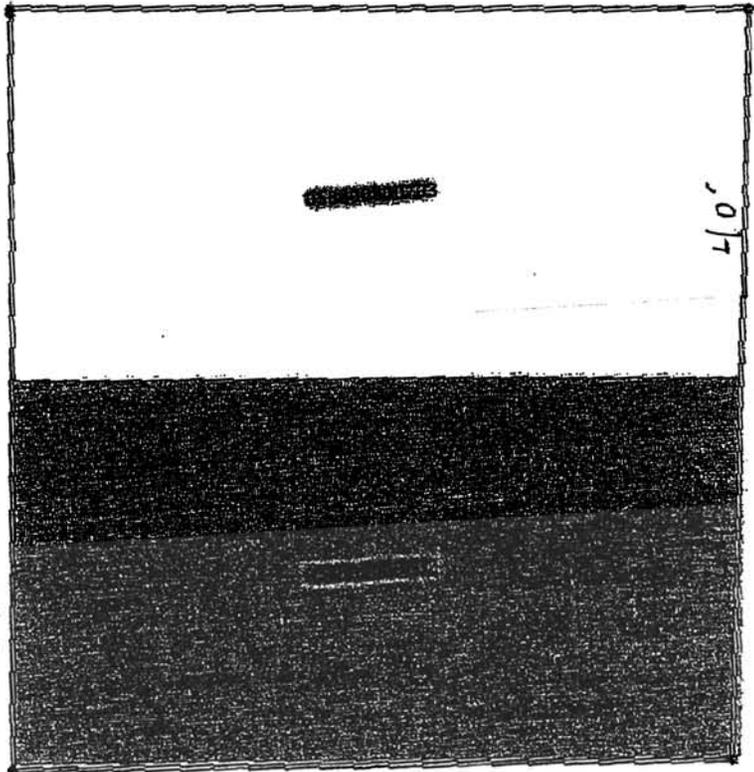
U.S. 101

N. 40'

84' LS. N. 40'

40'

84'



NORTH



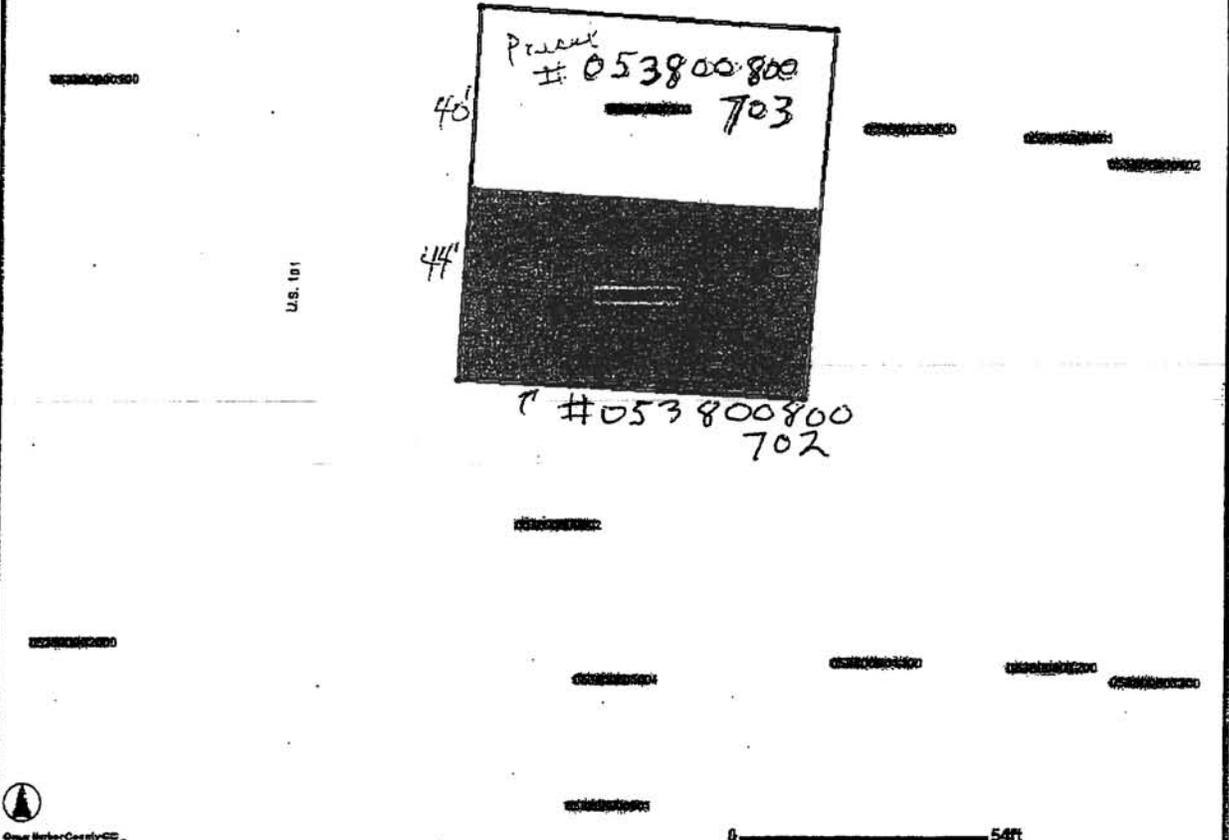
Gray's Harbor County GIS



0-000000138

# Grays Harbor County

Chenault Ave.



Disclaimer: Grays Harbor County makes every effort to ensure that this map is a true and accurate representation of the work of County government. However, the County and all related personnel make no warranty, expressed or implied, regarding the accuracy, completeness or convenience of any information disclosed on this map. Nor does the County accept liability for any damage or injury caused by the use of this map.

To the fullest extent permissible pursuant to applicable law, Grays Harbor County disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchant ability, data fitness for a particular purpose, and non-infringements of proprietary rights.

Under no circumstances, including, but not limited to, negligence, shall Grays Harbor County be liable for any direct, indirect, incidental, special or consequential damages that result from the use of, or the inability to use, Grays Harbor County materials.

## LEGEND

- Major Roads
- Roads
- Streams
- Contours
- Wetlands
- Wetland Buffers
- Flood Zones
- Water Bodies
- Zoning
- Cities
- Parcels

© 2009 - Grays Harbor County GIS  
100 W Broadway  
Montesano, WA 98563

No. 41691-3-II

COURT OF APPEALS DIVISION TWO  
OF THE STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION TWO  
STATE OF WASHINGTON  
CLERK

---

JOHN R. WYSS  
Plaintiff/Appellant

vs.

GRAYS HARBOR COUNTY, RESPONDENT

Defendant/Appellee

---

APPEAL FROM SUPERIOR COURT  
FOR THURSTON COUNTY

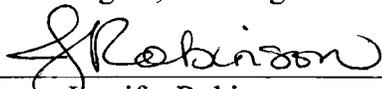
---

DECLARATION OF SERVICE

---

I, Jennifer Robinson, declare under the penalty of perjury that I served a copy of appellant's Opening Brief on appellee's attorney by depositing a copy of that document with the U.S. postal service addressed to Jennifer Wieland, Senior Prosecuting Attorney, 102 W. Broadway, Room 102, Montesano, Washington, 98563, and by faxing to 360-249-6064.

Dated: April 14, 2011, at Arlington, Washington.

  
Jennifer Robinson

 ORIGINAL