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Court of Appeals  
Division II  
State of Washington  
11/28/2017 1:40 PM  
Appeal No. 49951-7-II

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

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Ronald W. Erickson,  
*Appellant,*

v.

Port of Port Angeles, City of Port Angeles, Clallam County,  
Nippon Paper Ind. USA, and Puget Sound Mills & Timber Co.  
(stockholders),  
*Respondents.*

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**REPLY  
To  
Nippon Paper Industries, USA  
And  
Port of Port Angeles'  
RESPONSE TO APPELLANT'S OPENING BRIEF**

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Black's Law Dictionary 4 <sup>th</sup> Ed. Rev. 13 <sup>th</sup> Reprint—1975.	7
Hall, Daniel E., & John P. Feldmeir, 2009. <i>Constitutional Values</i> , Upper Saddle River:Pearson Prentice Hall	8,35
Tegland, ed. 2006. The Rules of Practice Series—5 <sup>th</sup> ed. u.p.: Thomson/West.	21
Washington State Access to Justice Board Justice Without Barriers Committee, <u>Washington State Ensuring Equal Access for People with Disabilities – A Guide for Washington Adminis- trative Proceedings</u> (May 2011)	5,6,33.

## I. INTRODUCTION

### A. Conclusory Comments

*“The record reflects that both parties fell, from time to time, into the trap of relying upon conclusory statements of fact, supposition and opinion, in support of their respective positions in these summary judgment proceedings. It would unduly prolong this opinion to dissect the rather voluminous record in order to separate the ‘wheat’ from the ‘chaff’ in terms of competent and incompetent evidence, when we have already determined that there are genuine issues of material fact on the issue . . . appellant has also managed to demonstrate genuine issues of material fact by competent evidence as to each of her theories.” Kennedy v Sea-Land Services, Inc. 62 Wn. App. 839, 855- 856, 11 P.2d 75 (1991). Erickson’s Motion for Reconsideration, CP 233.*

The Port of Port Angeles [hereafter The Port]; Nippon Paper Ind. USA [hereafter Nippon (prior NPIUSA) or P&N (The Port & Nippon)]; the city of Port Angeles [hereafter The City]; and the Litigation Guardian [hereafter LG] made many conclusory statements that thwart attention from due process violations, CP 551, *See* Appendix [C-1]; The Port’s public utility and transportation corridor, RCW 64.04.180/190 [hereafter PU&TC]; and Erickson’s parcel’s vested title in adjoining city streets.

B. AS TO: P&N finding Erickson’s pleadings, “incomprehensible . . . ill-formed, convoluted and legally dubious. . . .” Response,<sup>1</sup> p 35.

The court finds Erickson’s briefs typical for *pro se* litigants, CP 208 (judicial comment) [C-2]. The court also finds Erickson does not answer questions well, VBR (6/15/2016) p 55, lines 16—18 [C-3].

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<sup>1</sup> NOTE: *Response* refers to P&N’s *Response to Appellant’s Opening Brief*.

### C. Reviewing Guidelines

Reply to issues raised in P&N's *Response* brief is appropriate, RAP 10.3(c),<sup>2</sup> and RAP 1.2(b) [A-2], *Wright v B&L Props., Inc.*<sup>3</sup>

P&N's *Response* often refers to the lower court's conclusions of law that are not admissible on review of summary judgments, *Donald v Vancouver*.<sup>4</sup> Reviewing courts only need to decide issues that are determinative, *Schmidt v Cornerstone Invest.*,<sup>5</sup> while being flexible and non-technical with inartful *pro se* pleadings, *Hains v Kerner*.<sup>6</sup> This is especially true due to numerous references to due process violations and that such must never be defeated under the guise of "local practice", CP 397 para. 1 citing *Davis v Wechsler*.<sup>7</sup> Courts must not dismiss claims when facts are in dispute, CP 948 [C-54]; nor when a public burden is born by one.<sup>8</sup> Courts are encouraged to give leniency when processing *pro se* pleadings,<sup>9</sup> by not always requiring technical compliances,<sup>10</sup> especially for the indigent when forced into litigation for their Constitutional rights.<sup>11</sup>

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<sup>2</sup> RAP 10.3(c) Appendix A-1, hereafter [A-1].  
<sup>3</sup> *Wright v B&L Props., Inc.*, 113 Wn. App. 450, 458, 53 P.3d 1041 (2002) [A-3].  
<sup>4</sup> *Donald v Vancouver*, 43 Wn. App. 880, 883, 719 P.2d 966 (1986) [A-4].  
<sup>5</sup> *Schmidt v Cornerstone Invest.*, 115 Wn.2d 148, 165, 795 P.2d 1143 (1990) [A-5].  
<sup>6</sup> *Hains v Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed.2d 652 (1972) [A-6];  
*Hughes v Rowe*, 449 U.S. 5, 9-10, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980) [A-9].  
<sup>7</sup> *Davis v Wechsler*, 263 U.S. 22, 44 S. Ct. 13, 68 L. Ed. 143 (1923) [C-44].  
<sup>8</sup> *Robinson v Seattle*, 119 Wn.2d 34, 53, 830 P.2d 318 (1992) [A-7].  
<sup>9</sup> *Baldwin County Welcome Cntr. v Brown*, 466 U.S. 147, 164-65, 104 S. Ct. 1723, 80 L. Ed. 2d 196 (1984) [A-8].  
<sup>10</sup> *Drone v Hutto*, 565 F.2d 543, 544-45 (1977) [A-10].  
<sup>11</sup> *Boddie v Conn.*, 401 U.S. 371, 375, 386, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) [A-78].

## II. CORRECTIONS TO STATEMENT OF THE CASE

### A. Corrections to P&N's Facts & History<sup>12</sup>

1. *Property Description, Response* p 1-2 [hereafter RB-1]. “Mr. Erickson owns a small triangular parcel of real property located in Port Angeles, Washington at the corner of K Street and Marine Drive within the Sampson Donation Claim [hereafter SDC], CP 277 (map), with sides of 13', 23' and 32', CP 676, . . . AF# 1997 1001505000, CP 675.”
2. *Property Value*, RB-2, para. 2. “In 1997, Mr. Erickson acquired the Property for a nominal price through a tax foreclosure sale deed that did not list any exclusion to retaining fee title in adjoining city streets, CP 675-76, CP 229 para. 35, whose original ownership was Puget Sound Mills & Timber Co. [hereafter PSM&T], CP 502.”
3. *1913 Deed*, RB-3. “In 1913, the City received a dedication deed, CP 647-650, with a reversion clause upon wrongful or discontinued use, to construct a highway, that part of such would become known as Marine Drive, CP 1084 para. 3.27, CP 248 (Ord. #417), CP 611 (Ord. #940).”
4. *City Vacation Ordinance #2527*, RB-3. “the City eliminated its interest in “K” Street via City Ordinance No. 2527, that the Clallam County Auditor claimed The City failed to record Ord. #2527 in the auditor's office with The City executing and delivering quit claim

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<sup>12</sup> \*ADDITIONS made by Mr. Erickson are ~~crossed out~~ and underlined.

deeds of the same to the Port and NPIUSA, with no warrantee nor “after acquired interests” attached, CP 636 lines 5—7 [C-34]; . . .”

5. *The Gravamen of Mr. Erickson’s Claims* p 3. “. . . appears to be that he is entitled to enlarge his small Property to include approximately 2.5 acres is based upon the theory that lots adjoining streets in plats own fee title in the adjoining streets, CPs: 229-30 (The Port); CP 640 para. 38 and CP 940-41 (The City), as vested rights unaffected by street vacations. AND, based upon a theory of reversion rights dating back 100 years to a 1913 street dedication, CP 649, ~~or~~ AND to receive compensation from the named defendants for various “takings”. . .”
6. *Mental Disability* p 3. “Mr. Erickson claims a mental disability in compliance with the American Disabilities Act of 1990, CP 393, with a short memory challenge (delayed auditory recognition score).<sup>13</sup>
7. *Primary Claims*, p 5-6. “Despite certain ~~sensational accusations~~ claims (fraud or negligent misrepresentation, CP 1111—1131, discrimination, damages) Mr. Erickson the Litigation Guardian was primarily concerned with claims concerning title, boundaries, and general respect for his Erickson’s property rights. . .” Erickson’s focus included due process violations for takings of his property without compensation (Utility trespass, leasing, and street vacations): CP 397 para. 1 [C-44];

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<sup>13</sup> See Sealed Documents, Dr. Bruce J. Tapper’s 12/17/98 Psychological Evaluation, p 3.

2) the neglect regarding public transportation liens on his Property, RCW 64.04.180/ 190: 3) and property claims.”

### III. ARGUMENT

A. Question #1 Did the Superior Court err in declining to appoint counsel for appellant Ronald W. Erickson?

1. AS TO: “Erickson provides no citation to competent authority in the state of Washington for the proposition that a trial court is required to appoint legal counsel to represent a pro se plaintiff in a civil matter.” Response, p 18.

The discretion of the court is on a case by case basis and the feasibility of the requested accommodation”, GR 33(c)(1)(C).<sup>14</sup>

Erickson’s GR 33 request sought “equality under the law” for due process violations for unlawful governmental takings of private property without compensation, CP 394—96 as well as an unprocessed Torrens application, CP 398. Erickson’s request was responded to similar to a motion to appoint an attorney, VRP (4/22/2016) p 11 [C-106].

Erickson cited federal authority for this request, CP 397-98; and referred to a legal guide funded by the Washington State Bar <sup>15</sup> that specifically recommended appointment of counsel when needed, CP 414 para. 11 [C-45]. The authors of such document asserted that “equal access” equates to “equal justice” in Washington State and was endorsed

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<sup>14</sup> GR 33(c)(1)(C) [A-11].

<sup>15</sup> Washington State Access to Justice Board Justice Without Barriers Committee, Washington State Ensuring Equal Access for People with Disabilities – A Guide for Washington Administrative Proceedings (May 2011) p 13, 16, 26, 27, 34, 35. [A-12].

by many legal organizations.<sup>16</sup> “Equal access” so established must not impede access by “unreasonable distinctions”<sup>17</sup> by requiring indigent *pro se* litigants to refute unlawful takings against defendants paid from public funds. *Opening Brief*, Issue #12 p 45 [C-46]. Denying appointment of an attorney is not “feasibly” just or equal.

## 2. *The Problem With This Question As Asked*

The question presumes no representation was given. Counsel was appointed to determine claims of merit WHILE representing Erickson, CP 019 (or: 565, 796, 888, 6/24/15 Kitsap order) [C-47]; CP 795 [C-48]. No authority was thought to exist for appointment of counsel, CP 989 (County Admin. Letter) [C-49]; VRP (4/22/2016) p 11 [C-50]. A GR 33 request for help logically precedes a motion to appoint counsel. Erickson objected to LG’s report dismissing taking and public interest claims, CP 386-89.

The LG requested the judge to “narrow the scope” of the order as the LG had a conflict of interests, RPC 1.7(b)(1).<sup>18</sup> CP 988 (July 29, 2015 admin. letter to Kitsap Judge) [C-51]; CP 986 (Aug. 25, 2016 admin. letter to LG) [C-52] CP 981 (Oct. 23, 2015 Amended LG Report); VRP (2/22/2016) p 8-9 [C-53]. That conflict must relate to the LG’s employment as a Clallam County judge, and his need to again serve the county’s

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<sup>16</sup> Ensuring Equal Access, p 34 and p i (Acknowledgments).

[A-13].

<sup>17</sup> *Williams v Okla.*, 395 U.S. 458, 459-60, 89 S. Ct. 1818, 23 L. Ed. 2d 440 (1969)[A-14].

<sup>18</sup> RPC 1.7 (b)(1)

[A-15]

best interests by eliminating all due process claims.

The Kitsap court's answer was to only restrict the LG from doing "discovery and trial," but not specifically restricting the LG from representing Erickson at pre-trial hearings. This seems implied by the Kitsap court allowing "litigation costs" at *ex parte* hearings. This was the court's response to concerns about title reports and expert witnesses, though the term "litigation costs" includes much more, RCW 4.84.010.<sup>19</sup> Litigation is also defined as "civil action", and "a contest in a court of justice for the purpose of enforcing a right."<sup>20</sup> Motions are included.

The Kitsap court allowing the LG to proceed without representing Erickson makes the appointment "arbitrary" and NOT similar to any Congressional *ad litem*, as *ad litem*s represent a client's needs.<sup>21</sup>

In regard to Erickson's GR 33 request, Erickson thought the LG appointment, CP 397 [C -59] was similar to a Torrens title examiner, RCW 65.12.090,<sup>22</sup> CP 394, 397, c.f. CP 1045 para. 2.1 [C-55]; CP 1069 para. 3.2 [C-56]. Erickson filed a Torrens application, CP 1045 para. 2.1 [C-55], CP 1069 para. 3.2 [C-56]. A Torrens title examiner identifies title and liens on property and produces a certified report for the court that did not dismiss claims of title and liens without client's approval, RCW

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<sup>19</sup> RCW 4.84.010

[A-16].

<sup>20</sup> Black's Law Dictionary 4<sup>th</sup> Ed. Rev. 13<sup>th</sup> Reprint—1979, p 1082.

<sup>21</sup> *In re Dependency of MSR*, 174 Wn.2d 1, 12, 271 P.3d 234 (2012)

[A-17].

<sup>22</sup> RCW 65.12.090

[A-18].

65.12.110.<sup>23</sup> A Torrens court had power to identify “all liens and encumbrances” and remove “all clouds from the title”, RCW 65.12.040.<sup>24</sup>

Court advisors ought not violate constitutional rights, as Erickson’s “prayer for relief” included damages for takings, CP 1132 para. 5 [C-9].

### 3. *Wechsler Score as Grounds for Appointment*

Court discretion is applied case by case. Erickson’s Wechsler delayed auditory recognition score<sup>25</sup> is indicative of short term memory challenges; and the disparity and range of test scores indicate impairment.

It is no mistake to say that The Port & Nippon had difficulty with Erickson’s briefs, *Response* p 33 [C-65] and that Erickson’s abilities presented challenges to his speaking and writing, CP 434 para. 1.5 [C-66]; VRP (6/15/2016) p 55 [C-3]. The courts believed Erickson adequate as any other *pro se*, CP 208 [C-68]; VRP (7/24/2015) p 9 [C-69], “fool.”<sup>26</sup> Erickson often has difficulty contextualizing and “staying on track.”<sup>27</sup>

Erickson’s writing tries to hold onto ideas before they roll off the oval clipboard of his mind. Distracting thoughts vacuum ideas into

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<sup>23</sup> RCW 65.12.110 [A-19].

<sup>24</sup> RCW 65.12.040 [A-20].

<sup>25</sup> See Appellate GR 33 sealed documents, Dr. Tapper’s 12/17/98 evaluation.

<sup>26</sup> Hall, Daniel E., & John P. Feldmeir, 2009. *Constitutional Values*, 432. Upper Saddle River:Pearson Prentice Hall [A-22].

<sup>27</sup> NOTE: A contextual challenge was evident in the last conversation before signing a dismissal with *Clallam County*, drafted at Erickson’s request, *Appeal #49951-7-II*: Mr. Erickson pointing to a phrase, “*And why this language?*” Mr. Wendt: “*They were already dismissed.*” Mr. Erickson looking at document, “*Than that means I may appeal those issues.*” Mr. Wendt says nothing. Mr. Erickson: “*Then I guess I can sign this.*”

oblivion. Erickson’s working memory sees like tunnel vision, or a spotlight in darkness – thoughts disappearing unless spotlighted. One brief page represents much rewriting of unconnected-nests of repetitions with elusive missing statements; here a little, there a little. Erickson’s short memory equates to a litigant’s limited access to information where the lack of appointed counsel was an abuse of discretion *Peterson v Nadler*.<sup>28</sup>

#### 4. *The 7<sup>th</sup> Amendment’s Influence*

Our State Constitution<sup>29</sup> and *Beacon Theaters v Westover* affirms, by the 7<sup>th</sup> Amendment,<sup>30</sup> the right of a trial by jury in civil cases and for declaratory relief,<sup>31</sup> CR 57. Erickson’s requested declaratory reliefs, CP 1132-4, were dismissed ignoring this “inviolable” right, CR 38(a).

The 7<sup>th</sup> Amendment guarantees satisfaction in “equitable” cases where legal claims are erroneously dismissed, *Lytle v Household Manufacturing Incorporated*.<sup>32</sup>

Although the 7<sup>th</sup> Amendment is not yet incorporated into the States, it is arguably “equal justice under the law” to include such in a State litigating a taking claim as a violation of the 5<sup>th</sup> and 14<sup>th</sup>

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<sup>28</sup> *Peterson v Nadler*, 452 F.2d 754, 757-58 (1971)

[A-23].

<sup>29</sup> Const. art. I § 21 [“The right of trial by jury shall remain inviolate . . . and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.”]

<sup>30</sup> 7<sup>th</sup> Amendment

[A-24].

<sup>31</sup> *Beacon Theaters v Westover*, 359 U.S. 500, 509-10, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959)

[A-25].

<sup>32</sup> *Lytle v Household Manufacturing, Inc.*, 494 U.S. 545, unk., 110 S. Ct. 1331, 108 L. Ed. 2d 504 (1990).

[A-26]

Amendments. Smaller juries than twelve are now allowed.<sup>33</sup>

If children's rights are greater than property rights and are entitled to appointed counsel, how may wrongful takings against the indigent and mentally challenged be denied appointments, *MSR*?<sup>34</sup> Denying such when public funds defend municipalities' takings against the indigent violates the Equal Protection Clause, *Opening Brief, Issue #12* p 45 [C-70].

#### 5. *Federal Courts Justify Appointment of Attorneys*

Some federal courts believe state courts are competent to handle due process violations because states have a due process clause, Const. art. I, § 3. This judicial perspective presumes "equality before the law."

*Mathews v. Eldridge*,<sup>35</sup> provides a test to determine if appointment of counsel is required in due process violations, See *Opening Brief* p 48 (Erickson neglected on p 48 to cite *Mathews* as his source). A successful *Mathew's Test* puts the government's interests low, and the risk of error and party's interest high. Under the *Mathews* test a GR 33 failure to appointed counsel for Erickson would create the possibility of great error and is thus unconstitutional, *See MSR* for appointed counsel for children.<sup>36</sup>

Under 28 USC 1915(e)(1) federal courts allow for the indigent<sup>37</sup> an appointment of a volunteer attorney who may be paid out of judicial

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<sup>33</sup> *Colgrove v Battin*, 413 U.S. 149, 160, 93 S. Ct. 2448, 37 L. Ed. 2d 522 (1973) [A-27].

<sup>34</sup> *In re MSR*, 174 Wn.2d at 13 [A-28].

<sup>35</sup> *Mathews v. Eldridge*, 424 U.S. 319, 334-5, 96 S. Ct. 893, 47 L. Ed. 2d 18(1976)[A-29].

<sup>36</sup> *In re MSR*, 174 Wn.2d at 14 [A-30].

winnings, not otherwise.<sup>38</sup> Equality under the law ought to require States to appoint attorneys for the indigent for wrongful “takings” that were incorporated into the States. The complexities of a case and a court’s treatment of appellant justify an appointment of counsel, *Scott v Plante*.<sup>39</sup>

Erickson also listed a public interest argument, CP 396 [C-94].

B. Question #2 Did the Superior Court err in ordering a stay of the proceedings pending the report of the litigation guardian?

*Yes, by allowing an LG’s declared conflict of interest to proceed.*

C. Question #3 Did the Superior Court err in ordering the dismissal of certain of Mr. Erickson’s claims in accordance with the recommendations of the litigation guardian?

#### 1. General Speaking

Erickson converted this motion to a summary judgment, CR 12(b) (7) [C-71] requiring consideration of GR 33 papers in the clerk’s office.<sup>40</sup>

The LG failed to sculpt issues as violations of the Constitution’s Taking and Equal Protection Clauses,<sup>41</sup> thus dismissing such by a local practice. This is unconstitutional, *Davis v Wechsler*, [C-44]. A judge must administer justice as well as maintaining efficient court order, GR 1,<sup>42</sup>

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<sup>37</sup> *Wood v Housewright*, 900 F.2d 1332, 1335-36 (1990); and *Terrell v Brewer*, 935 F.2d 1013, 1017 (1990) [A-31].

<sup>38</sup> *Peterson v Nadler*, 452 F.2d at 758 fn. #6 [A-32].

<sup>39</sup> *Scott v Plante*, 532 F.2d 939, 949-50 (1976) [A-21].

<sup>40</sup> *In re Estate of Winslow*, 30 Wn. App. 575, 636 P.2d 505 (1981) [A-33].

<sup>41</sup> *Mathews v Eldridge*, 424 U.S. at 331 [A-34].

<sup>42</sup> GR 1 [“ . . . to secure the just, speedy, and inexpensive determination of every action.”].

*Hallman v Sturm Ruger & Company*.<sup>43</sup> Due process claims have a right to be heard in a meaningful way and time, *Mathews v Eldridge*.<sup>44</sup>

2. *AS TO: “Mr. Erickson . . . has failed to demonstrate how the Superior Court erred in relying on the recommendations of the litigation guardian. . . .”* Response, p 23.

The court erred dismissing claims with prejudice, CP 028 [C-73] without proving merit, *Woodhead v Discount Waterbeds, Inc.*<sup>45</sup>

The court’s reliance on an attorney’s recommendations is neither a trail on the merits, nor a proof of unreliable legal theories. The LG made a conclusory opinion that “there seems to be no disputed facts,” CP 984 [C-74]. However, the LG missed an obvious challenge to the viability of Erickson’s tax deed, CP 675, CP 1025 para. 8.64 (Clallam County’s *Answer*) [C-75]. Erickson’s parcel was certified by surveyors as viable, CP 277 (DOT survey), CP 707 (Wengler Survey), CP 1090 para. 3.52 (complaint), CP 1009 para. 3.52 (Clallam County denies), CP 901 para. 4-6 (Mr. Wengler’s comments, CP 901 para. 2—6 [C-77]).

The LG functioned much like a Torrens Registration title examiner who examined title, legally advised applicant, RCW 65.12.090,<sup>46</sup> and filed his abstract of title, RCW 64.12.110.<sup>47</sup> Erickson suggested this, CP 397

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<sup>43</sup> *Hallman v Sturm Ruger & Co.*, 31 Wn. App. 50, 53, 639 P.2d 805 (1982) [A-35]

<sup>44</sup> *Mathews v Eldridge*, 424 U.S. at 333 [A-36].

<sup>45</sup> *Woodhead v Discount Waterbeds*, 78 Wn. App. 125, 130, 896 P.2d 66 (1995) [A-37].

<sup>46</sup> RCW 65.12.090 [A-18].

<sup>47</sup> RCW 65.12.110 [A-38].

(GR 33 application.) [C-59]; CP 1045 para. 2.1 [C-55]; CP 1069 para. 3.2 [C-56], though the LG failed to prove for the court Erickson's land claims nor represent him at the dismissal of issues, VRP (4/22/2016) p 8.

The court's reliance on the LG report was inadequate because it shockingly denied the appearance of justice concerning due process issues when Erickson asserted the U.S. 5<sup>th</sup> and 14<sup>th</sup> Amendments against unlawful takings and due process violations: In GR 33 request: CP 394-97 [C-14] (quoting *Gideon v Wainwright*, and *Betts v Brady*;<sup>48</sup> In a letter to the LG: CP 971 [C-15]; In Erickson's 2<sup>nd</sup> Amended Complaint: CP 1105 para. 8.32 [C-4]; CP 1114-15 para. 9.13 [C-5]; CP 1117 para. 9.23 [C-6]; CP 1119 para. 9.30 [C-7]; CP 1122 para. 9.40 [C-8]; CP 1132 item 5 [C-9]; CP 1132 item #5 (Prayer for Relief) [C-9], as in In Erickson's first complaint: CP 1150 (Caption of Complaint) [C-11]; CP 1161 Issue F [C-12]; CP 1167 para. 5.1 [C-13]; In Erickson's response to P&N's motion to dismiss claims: CP 934 para. 3.35 [C-16]; CP 945-47 para. 4.13-20 [C-17]; CP 952 para. 4.37-39 [C-18]; In Erickson's More Definite Statement [hereafter MDS], CP 779 para. 3.27 [C-19]; CP 492 line 11f [C-20]; CP 493 [C-21]; In Erickson's Response to P&N's Summary Judgment: CP 226 para. 21 [C-22]; and In Erickson's Motion for Reconsideration: CP

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<sup>48</sup> *Gideon v Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963); *Betts v Brady*, 316 U.S. 455, 475-76, 62 S. Ct. 1252, 86 L. Ed. 1595 (1942) [A-39].

181 para. 7.7 [C-23]; CP 184, para. 7.21 & 7.23 [C-24]; CP 188 para. 7.43 [C-25]. A taking claim was recognized by The City: CP 879 line 7 [C-26]; and P&N: CP 434 para. 1.6 [C-27], though The Port told the court, that Erickson DID NOT include such in Erickson’s 2nd Amended Complaint’s Prayer for Relief, CP 434 para. 1.6 [C-28]. Erickson did, CP 1132 para. 5 [C-9]. Both a “taking”, CP 947 [C-57] and an “arbitrary and capricious” action were defined by Erickson in his briefs, CP 950 para. 4.30 [C-58].

*3. The Litigation Guardian wrongfully dismissed issues*

The briefs and affidavits for the motion to dismiss claims included Erickson identifying three issues for The Port, CP 771 [C-80]; 1) The Port acquiring a PU&TC; 2) The Port’s utility use; and 3) The due process violation concerning “K” Street (projected) in the SDC that lacked constructive notice to the foreclosure title report, CP 270-273; to the tax foreclosure judge, RCW 84.64.080; and Erickson, when The City failed to file such with the county auditor, CP 767 [C-31]. Erickson was also not notified of The Port’s 2003 short plat proceedings in violation of due process and State Law, CP 949 [C-29]. The same violation occurred with The City’s Ord. #3171 (another “K” St. vacation), CP 249—251. Erickson’s complaint was filed May 5, 2014, CP 1175, within a ten year

statute of limitations, RCW 4.16.020,<sup>49</sup> CR 6(a)<sup>50</sup>, of The Port's May 4, 2004 short plat, CP 325 [C-36], and The City's Oct. 5, 2004 Ord. #3171.

*a.* The Port Acquired a PU&TC

RCW 64.04.190 set out three qualifications for the legislative designation of a public agency receiving a PU&TC: "(1) . . . railroad operations have ceased; (2) been found suitable for public use . . . ; and (3) . . . acquired by the state, or one of its political subdivisions. . . ."

Erickson affirmed The Port qualified, CP 234 para. 56 [C-81].

CP 501-02 established 1919 railroad use of PSM&T property. That use was the same legal description as Erickson's tax deed, CP 365-366.

Previous owner to Erickson's tax deed was CMC Heartland Partners, CP 270 (tax sale title report) who owned RR property, CP 682.

CP 359 affirms that the railroad operation on Erickson's property was suitable for other public uses, i.e. North Coast short rail service.

CP 262-264 affirms that The Port acquired CMC Heartland Partner's rail interests on parcel #1 [Parcel #1, CP 264 (Vol. 102 p 467) is CP 502 (PSM&T's RR deed), Erickson's tax deed description, CP 676].

CP 262 affirms that railroad operation ceased on Parcel 1.

CP 517 affirms that CMC Heartland offered to sell all railroad holdings on the Olympic Peninsula.

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<sup>49</sup> RCW 4.16.020

[A-40].

<sup>50</sup> CR 6(a)

[A-41].

Then CP 263 affirms The Port acquired railroad rights on Parcel 1.

The Port is a municipality, CP 1075 para. 2.4, or “one of the political subdivisions” of the state. Thus The Port acquired a PU&TC on Erickson’s lot and on its retained vested fee title in adjoining streets, Marine Dr. and “K” Street (projected) on the SDC, as one railroad lot.

*b. Extinguishing a PU&TC*

The Port’s dismissal of a statutory lien, RCW 64.04.180/ 190, must not be by executive comment, or municipal authority. Legislated public interests are not sacrificed to private agreements, *Motor Contract Co. v Van Der Volgen*.<sup>51</sup> Justice Story in 1836 affirmed that “abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear,” *Proprietors of Charles River Bridge v Proprietors of Warren Bridge*,<sup>52</sup> and that “the rule of construction above states as the settled one,” *Id.* at 548.

Additional support is found by examining the State Legislature’s repurchase of railroad franchises through state lands,<sup>53</sup> as well as the legislature requiring railroads to record with the Sec. of State the counties to receive future rail development.<sup>54</sup> Counties then received notice of the

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<sup>51</sup> *Motor Contract Co. v Van Der Volgen*, 162 Wash. 449, 454, 298 Pac. 705 (1931)[A-42]

<sup>52</sup> *Proprietors of Charles River Bridge v Proprietors of Warren Bridge*, 36 U.S. 420, 547-48, 11 Peters 420, 9 L. Ed. 773 (1837) [A-43].

<sup>53</sup> Laws of 1909, ch. 127, p 422; Laws of 1925, ch. 95, p 140 [A-44].

<sup>54</sup> Laws of 1889, ch. 17, § 3, p 527-28 [A-45].

restriction on RR's power of eminent domain.<sup>55</sup> RR property is subject to legislative control.<sup>56</sup> Such allowed the legislature to change city RR franchises to "urban transportation corridors, RCW 35.84.060.

According to Justice Story public interest was more critical to affirm abandonment than the type of grant given.<sup>57</sup> The grant given in *Proprietors* was a "franchise",<sup>58</sup> but what it was called didn't matter.

Washington case law supports the notion that, "all franchises vest a public interest," *Robinson v Silverlake*.<sup>59</sup> *Robinson* affirmed that a log boom company could not divest themselves of their public duty by amending their articles of incorporation to claim becoming a private boom company. A single act of a corporation, whether private or municipal, must not dissolve a prior public duty. *Silverlake* cited to *Munn v Illinois*<sup>60</sup> to affirm the necessity of submission to the common good.

If a PU&TC statutory lien does exist it must not be dismissed.

c. The Port & Utility Use

On Nov. 13, 1987 The Port acquired a PU&TC corridor over Erickson's property, CP 263-63, and on June 4, 2003 The Port granted a utility easement across their land, AF#0630001900 700000, CP 296 [C-

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<sup>55</sup> Laws of 1909, ch. 196, §1 p 699

[A-46].

<sup>56</sup> Laws of 1889, ch. 17, § 4, p 528 (not repealed nor codified in RCWs)

[A-47].

<sup>57</sup> *Proprietors* 36 U.S. at 547-48

[A-43].

<sup>58</sup> *Id.* at 547-

[A-48].

<sup>59</sup> *Robinson v Silverlake*,<sup>59</sup> 153 Wash. 261, 272, 279 P. 1109, 1121 (1929)

[A-49].

<sup>60</sup> *Munn v Ill.*, 94 U.S. 113, 126, 24 L. Ed. 77 (4 Otto 1877) [decided 1876]

[A-50].

89], adjacent to Erickson's parcel, AF# 0630001900 750000 (AF# 19971001505000) CP 365 [C-90].

On July 1, 2003 The Port & DOT amended their P&U Agreement, CP 290 line 9, to exclude Erickson's parcel, AF#1997 1001505000, CP 292 [C-72], as surveyed on Nov. 22, 2002 by DOT, CP 276-77.

By Aug. 22, 2003 utility easement was not located. CP 309-310 (8/21/03 preliminary survey). On Oct. 6, 2003, The City noted no utility service and required utility easements to be shown on final short plat, CP 301 [C-61], CP 302 [C-84]; CP 298 [C-84] ("The entire property is under The Port of Port Angele's ownership"); supported by a required title report, CP 302 [C-84], CP 325 (surveyor's report) [C-79].

By Dec. 16, 2003 The Port's utility overhead line traverses Erickson's property away from Marine Drive, and along vacated "K" St. (projected) in the SDC and beyond, CP 326-27 (final short plat) [C-91].

On Oct. 14, 2012 The City acknowledged Erickson's claim, CP 346. No document exists for The Port's utility line traversing northerly across Erickson's tax lot or on Erickson's "K" Street (projected) in the SDC, CP 125. Erickson's complaints identified The Port's actions as negligent misrepresentation, CP 1119 [C-82], and city trespass, CP 1099.

The Port must prove adverse possession to defeat the claim.<sup>61</sup> As northerly power lines, CP 125, invade air space over Erickson's lot<sup>62</sup> and are due compensation as a taking, CP 945-47 para. 4.13-20 [C-17], CP 226 [C-93], and are an un-acquired PU&TC use, *Lawson v State*.<sup>63</sup>

*d. The Port's Plat & BSIP Evidence Leasing*

The Port's final Dec. 17, 2003 BSIP map, CP 125, and BSIP declarations and legal description's certified copy, no CP #, shows the legal description identical to CP 325[C-42], not CP 201-(preliminary BSIP). The Port's BSIP's certified declaration claimed The Port owned all the land so platted, CP 224 [C-83]. The approved preliminary map, CP 164-65, CP 160 (sketch), recognized Erickson's claim; but the final BSIP map CP 125, CP 161 (sketch), includes no designated boundary for Erickson's parcel. No lot descriptions in final legal description were included in BSIP as required by The City, CP 173 [C-85].

Previously The City authorized The Port's final 2003 short plat to include vacated "K" Street (projected) in SDC as part of Lease Lot #2, CP 302 [C-84]. The Port claimed ownership, CP-298 [C-84] and final plat included a title report, CP 302 [C-84]. The City approved The Port's 2003 preliminary BSIP map for four lease lots, CP 172 [C-85]. Two lots

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<sup>61</sup> *Petersen v Port of Seattle*, 94 N.2d 479, 618 P.2d 67, 70 (1980) [A-79].  
<sup>62</sup> *U.S. v Causby*, 328 U.S. 256, 266, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946) [A-51].  
<sup>63</sup> *Lawson v State*, 107 Wn.2d 444, 457-58, 461, 730 P.2d 1308 (1986) [A-52].

traversed Erickson's property, CP 162 or 201 (8/22/03 preliminary); CP 164-5 (blowup); CP 160 (sketch); CP 125 (final 12/17/03 plat) and CP 161 (sketch), even though The Port excluded Erickson's lot in a DOT sale.<sup>64</sup>

The Port actually leased lots, CP 126-46, that included Erickson's land in the legal descriptions of lots leased, CP 138 [C-86]; CP 143 [C-87]. A BSIP and short plats are contractual and more than a simple survey. They are "some interest therein" subject to a RCW 7.28.010 quiet title action, Opening Brief, Issue #5. This situation demands The Port acquire Erickson's property to comply with The City's conditions. Erickson's Prayer for Relief included damages for takings, CP 1133 [C-88].

D. Question #4 Did the Superior Court err in ordering Mr. Erickson to file a more definite statement of his claims against the Port and NPIUSA?

1. AS TO: "Erickson fails to demonstrate how the trial court erred in requiring him to provide a more definite statement." Response, p 25.

The err was in the court requiring Mr. Erickson to identify all "the legal theories on which Mr. Erickson was relying in support of his claim" Response p 25. See Erickson's Opening Brief, p 11-12, Issue #11.

The court restricted the MDS to not argue dismissed claims though Erickson mentioned due process, CP 493 [C-96]. MDS's typically do not include ALL legal arguments, CP 776 para. 10-13, referencing *Wash.*

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<sup>64</sup> Erickson's lot side distance, CP 277 [C-40] ["24.89"] c.f. Port's deed to DOT, CP 696 [C-39] ["thence south 9\*17'28" East 24.89 feet; . . . to the true point of beginning."]

*Practice*,<sup>65</sup> that cited two cases to affirm that pleadings on the rules only need to give notice, not discovery.

E. Question #5 Did the Superior Court err in granting summary judgment in favor of the Port and NPIUSA?<sup>66</sup>

1. AS TO: “In the present case, neither the Port nor NPIUSA has claimed an interest in the Property.” Response, p 28.

P&N’s 1989 quit claim deeds contain no exclusion from acquiring fee title rights in adjacent Marine Dr., CP 591-92, and Erickson’s tax deed has no restriction to retaining fee title in same adjoining street, CP 675.

P&N fails to affirm, as they did in 2004, that lots retain fee title rights in adjoining streets, CP 229-30 [C-97], CP 376 para. 6.7 [C-98]; VRP (6/23.16) p 27-8 [C-99], *Finley v Jordan*,<sup>67</sup> and *Pederson v Kingston Peters*.<sup>68</sup> The Port’s surveyor in 2004 testified that such was why The Port owned title to “K” Street in the SDC, CP 325(Surveyor’s Notes) [C-101]. P&N did not disclose this assertion of title when the court asked if anything happened after 1997 regarding title, VRP (9/23/26) p 30 [C-100].

The Port’s certified surveyor’s declaration occurred in both The Port’s 2004 short plat, CP 326-27 [C-36]; and BSIP, CP 125 (map) [C-83].

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<sup>65</sup> Telgrand, ed. 2006. *3A The Rules Practice Series—5<sup>th</sup> ed.*, CR 12, u.p.:Thomson/West p 269 [“all that is required is that it notifies the defendant of the nature of the claim.”]; *RTC Transport v Walton*, 72 Wn. App. 386, 391, 864 P. 2d 969 (1994); *Schoening v Grays Harbor Cmty. Hosp.*, 40 Wn. App. 331, 698 P. 2d 593 (1985) [A-53].

<sup>66</sup> Motion for Summary Judgment CP 371; Answer CP 229, Reply CP 213, Order CP 193.

<sup>67</sup> *Finley v Jordan*, 8 Wn. App. 607, 608, 508 P.2d 636 (1973) [A-54].

<sup>68</sup> *Pederson v Kingston Peters*, 6 Wn. App. 908, 913, 496 P.2d 970 (1972) [A-55].

This BSIP preliminary map was approved, requiring lot descriptions, CP 172 [C-85] that would include Erickson's tax lot and "K" St. in SDC, CP 325 [C-42]. Short plats and BSIP legal descriptions that include Erickson's property seem a claim of title when a title report is required, CP 357 [C-105], and delivered, CP 325 [C-79] with The Port accepting litigation costs for surveyor's errors on maps, [C-36], [C-83]. Such declarations are not found on simple surveys, CP 224 para. 14-15 [C-64].

2. *AS TO: P&N interpreting "The Plaintiff has no reversionary rights" in a prior order", CP 459, to mean that "based on Plaintiff's alleged reversionary interest in Marine Drive . . . was previously dismissed with prejudice." CP 376 para. 6.10.*

The City order overstated the discussed issue, a 1917 use of Marine Drive, VRP (6/15/16) p 42-43, CP 641. P&N did not discuss RCW 35.79.050's vested fee titles in streets. The court err was to divest Erickson of such rights by saying, "Plaintiff has no reversion rights."

3. *AS TO: Erickson's relinquishment that, "Nippon and The Port acquired rights in 'K' Street by quit claim deed" CP 377 [C-102].*

P&N assumes all references to "K" Street include "K" Street (projected) in the SDC, though such was not renamed "K" Street, but remained "Third Street North" in city records, CP 247-8 (Ord. #417), CP 602 (public disclosure request), CP 461, 465 (reply), VRP (6/15/16) p 40 (judicial notice). P&N fails to recognize that quit claims deeds fail to prove ownership of fee, RCW 64.04.050 [A-60]. P&N are mistaken.

4. *AS TO: The extent this claim relates to any reversionary rights NPIUSA may have to Marine Drive, Mr. Erickson has no legal standing to make such a claim. . . .* Response, p 34.

P&N claims that Nippon never made a title claim against Erickson, VRP (6/23.16) p 27-28 [C-99]. Nippon's property titles are outside the SDC, CP 266 (Nippon survey), CP 714—17 (list of deeds) EXCEPT The City's 1989 quit claim deed regarding "K" Street (projected), CP 591-92.

Property owners outside of plats are not entitled to reversion of Streets on boundary lines inside plats, CP 229-30 citing *Rowe v. James*.<sup>69</sup>

If PSM&T (stockholders) knew this in 1989 an injunction was appropriate, but after the taking compensation is due, CP 188 para. 7.43 citing *London v Seattle* [C-107]. However, in 1987 the legislature changed street vacation reversions from "dedicators" to adjoining property owners WITHIN a plat when vacating a plat boundary, RCW 58.17.212.<sup>70</sup> Nippon's '89 deed is not valid title. Nippon must prove their color of title stronger than Erickson's vested fee title, RCW 7.28.080,<sup>71</sup> CP 228 para. 30 [C-108]. This is impossible as street lands are not designated tax lots but part of assessed size of adjoining lots, RCW 58.17.040.<sup>72</sup> Erickson has paid taxes to secure his vested title in adjoining streets, CP 743, and

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<sup>69</sup> *Rowe v. James*, 71 Wash. 267, 271, 128 P. 539 (1912); *Christian v Purdy*, 60 Wn. App. 798, 803 fn #5, 808 P.2d 164 (1991) [A-56].

<sup>70</sup> RCW 58.17.212 [A-57].

<sup>71</sup> RCW 7.28.080 [A-58].

<sup>72</sup> RCW 58.17.040 [A-59].

received no notice of the 1989 vacation. Quit claim deeds do not prove fee title rights in streets, RCW 64.04.050,<sup>73</sup> when The City owned no fee in SDC to give P&N, CP 753-54 (1892 plat); CP 748-49 (U.S. Statutes).

5. *AS TO: "Mr. Erickson has not presented any evidence that the Port has ever claimed interest in the Property." Response, p 8.*

The Port's '89 quitclaim deed to "K" St. (projected) in SDC challenges Erickson's vested land rights therein. Such is a title claim.<sup>74</sup>

The Port's 2004 short plat, Surveyor's Notes #B affirms The Port's title claim in "K" Street in the SDC, CP 325 (same as CP 729) [C-101].

This claim of title entitlement is in defiance of The Port's chain of title, that specifically excluded The Port from acquisition of rights in any adjoining city street, CP 714—17 (deeds to lands near Erickson's land).

- CP 721—27 is a 1925 deed from PSM&T to Nelson that excluded Nelson from acquiring rights in city streets adjacent to Tracts C, D, E, and F of the SDC.<sup>75</sup>
- 1939 Tax foreclosure Deed from County to Clallam County, AF # 187324 (not part of court record) excluded Erickson's 140 sq. ft.<sup>76</sup>
- CP 256—60 is a 1945 County tax deed to The Port that excluded The Port from acquiring rights in city streets in SDC.<sup>77</sup>

The Port's had no legal right to receive a quit claim deed from The

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<sup>73</sup> RCW 64.04.050 [A-60].

<sup>74</sup> *Capitol Hill Meth. Church v. Seattle*, 52 Wn.2d 359, 368, 324 P.2d 1113 (1958) [C-10].

<sup>75</sup> CP 721—27 (1925 deed, PSM&T to Nelson - last paragraph) [C-76].

NOTE: previously recorded deeds to 1925 include: AF #61835, CP 649-50 (PSM&T's dedication for street in the SDC); and AF# 80193, CP 501-02 (PSM&T railroad rights).

<sup>76</sup> AF#187324 Vol. 135 P 235 (Clallam Sup. Ct. Cause #12 2 00884 4. App. #19) [C-62].

<sup>77</sup> NOTE: Reference to "Third Street" comes from street name in AF# 61835 as dedicated street not yet named. A 1939 foreclosure deed deleted PSM&T's RR lot, CP 715. The 1945 County deed to The Port excluded rights in any SDC street, CP 256 [C-109].

City to “K” Street within the SDC, VRP (9/23/2016) p 43 [C-110]. Deeds also may not acquire something previously restricted from acquiring.<sup>78</sup> The City also owned no title to give The Port, RCW 64.04.050 [A-60] and P&N’s quit claim deeds have no “after acquired title interests”, CP 592.

Erickson has superior title over The Port’s color, RCW 7.28.080,<sup>79</sup> CP 494 (MDS), CP 227 para. 29 [C-111], as Erickson’s property and “K” Street are unoccupied, CP 1092 para. 5.2 [C-112].

6. *AS TO: “Mr. Erickson has no legal interest in any portion of “K” Street.”* *Response, p 32*

Erickson owns a tax deed, CP 675.

“Lots” in streets exist if assigned an assessor’s parcel number. This not done for P&N’s ’89 lots, CP 326 (Survey), CP 325 (Notes) [C-42].

Deeds must exclude the right to own fee title in adjacent streets, unless they do such rights are vested, *Finley v Jordan*<sup>80</sup>; CP 178 para. 7.39—42; CP 333, 340; CP 178 para. 2.3, CP 181 para. 7.5; CP 187 para. 7.38 (RCW 35.79.050); CP 351; and courts may interfere, CP 916 para. 1.7 (cases) [C-10];<sup>81</sup> CP 188 para. 7.42; CP 640 para. 36; and CP 893 para. 1.4 (because English law created roads after gifting land grants) [C-35].

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<sup>78</sup> *Hagen v Bolcom Mills, Inc.*, 74 Wash. 462, 472, 133 P. 1000 (1913) [A-85].

<sup>79</sup> RCW 7.28.080 [A-58].

<sup>80</sup> *Finley v Jordan*, 8 Wn. App. at 608 [A-54].

<sup>81</sup> quoting *Fry v. O’Leary*, 141 Wash. 465, 469; 252 P. 111 (1927); *Thayer v King County*, 46 Wn. App. 734, 738, 731 P. 2d 1167 (1987); *Capitol Hill Methodist Church v Seattle*, 52 Wn.2d 359, 368, 324 P.2d 1113 (1958) [C-10].

Street property is “vested” to the abutting property owners<sup>82</sup> and “vested” rights are not affected by street vacations, RCW 35.79.050.<sup>83</sup>

The Port owns no rights in Marine Drive, CP 505 (title report) [C-63], and Nippon owns no legal rights in SDC, CP 714—17 (title report). So, Erickson’s land retains fee to Marine Drive, CP 940 para. 9.8 [C-104].

City Ord. #2527, CP 792-93, was not recorded, CP 767 [C-31]; CP 639 [C-32]; CP 890 [C-33], RCW 35.79.030.<sup>84</sup> Prior to RCW 58.17.212 (1987) a recorded street vacation was a legal division of a plat,<sup>85</sup> but still could not destroy vested rights, RCW 35.79.050. Since the 1997 tax foreclosure judge; title search, RCW 84.64.050(4), CP 270-4; and Erickson had no notice of a claim to a tax lot’s vested fee in adjoining “K” Street (projected)<sup>86</sup> then the tax deed was sold with such rights and its vested fee.

Ord. #417 (1913), CP 923 [C-43] named “K” Street (projected) in the SDC “Third Street North” as part of PSM&T’s dedication’s “manifest objective” to create a new road to Ediz Hook, CP 488-89 [C-113].

Since Marine Drive did NOT REVERT prior to 1997 Erickson RETAINS fee title to such as the only adjoining property owner with valid fee title rights. The prior railroad use of Marine Drive, then across The

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<sup>82</sup> *Greater Harbor 2000 v. Seattle*, 132 Wn.2d 267, 270, 937 P.2d 1082 (1997) [A-61].

<sup>83</sup> RCW 35.79.050; *London v Seattle*, 93 Wn.2d 657, 666, 611 P.2d 781 (1980) [A-62].

<sup>84</sup> RCW 35.79.030 [A-63].

<sup>85</sup> *Brown v Olmsted*, 49 Wn.2d 201, 213, 299 P.(2d) 564 (1956) [A-84].

<sup>86</sup> *Hampton v Gilleland*, 61 Wn.2d 537, 545, 379 P.2d 194 (1963) [A-82].

Property and “K” Street, AF Vol. 303 p 475 (1967 C.M.St.P.&P. RR Co.’s sewer line map – Sup. Ct. #122008844 App. #22) indicate that PSM&T intended to retain these lands as one parcel, *See* ‘25 deed, CP 726 [C-110].

Since City Ord. #2527 was not recorded Erickson retained his vested rights, RCW 35.79.050,<sup>87</sup> just as recording an easements with a road department when required to file with an auditor was not adequate.<sup>88</sup>

*F. Question #6 Did the Superior Court err in denying Mr. Erickson’s motion for reconsideration of its order granting summary judgment in favor of the Port and NPIUSA?*

1. *AS TO: “Erickson offers no citation to authority explaining why the trial court erred in denying his motion for reconsideration.”*

*Response, p 36*

There were two errors identified in Erickson’s Opening Brief p 48.

First: Erickson asserted that an “Abuse of discretion occurs when . . . on untenable reasons . . . or a failure to express any reason. fn #126.” The judicial order, CP 095, failed to show any reason for the denial and thus shows lack of all discretion and an error of discretion.<sup>89</sup>

Secondly: his Opening Brief, p 48, refers to “Three requirements to show due process violation . . . 1) . . . The private interest . . . 2) . . . The risk . . . and 3) the government’s interests. . . .”<sup>90</sup> - “The Mathews test”<sup>91</sup>

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<sup>87</sup> *Holmquist v King County*, 182 Wn. App. 200, 211-12, 328 P.3d 1000 (2014) [A-83].

<sup>88</sup> *Ellingsen v. Franklin Cnty.*, 117 Wn.2d 24, 30, 810 P.2d 910 (1991); *Tomlinson v. Clarke*, 118 Wn.2d 498, 500, 825 P.2d 706 (1992) [A-81].

<sup>89</sup> *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) [A-64].

<sup>90</sup> *McCarthy v Darman*, 372 Fed. Appx. 346, 350 (2010) [A-65].

that is used to determine if due process violations occur. No stated reason equates to high probability or possibility of government error and indicative that the motion for reconsideration was improperly dismissed.

It was appropriate for Erickson to raise a new legal theory, RCW 7.28.080 (superior title) [A-48], CP 494 (MDS), in Erickson's motion for reconsideration, when based on same facts, *Reitz v. Knight*.<sup>92</sup>

2. *AS TO: "the extent this claim relates to any reversionary rights NPIUSA may have to Marine Drive, Mr. Erickson has no legal standing."* Response, p 33

This question is material as it determines if Erickson has claim to adjacent "K" Street lands vacated by city Ord. #3171. Standing to prove vested rights (rather than proving fraud) is affirmed OK by the courts.<sup>93</sup>

G. Question #7 Should the Court of Appeals award attorney fees and expenses to the Port and NPIUSA?

1. *There Are Debatable Issues.*

Besides the legal definitions of Erickson's Opening Brief, P&N and Erickson disagree on these answers: 1) Does the definition of "property" include fee title to adjoining streets? 2) Do tax deed descriptions include fee title to adjoining streets if no restrictions in the tax deed? 4) Is a plat map's final plat and legal description thereon a color of title when a title report is required?

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<sup>91</sup> *Mathews v. Eldridge*, 424 U.S. at 334-5 [A-29].

<sup>92</sup> *Reitz v. Knight*, 62 Wn. App. 575, 581 n.4, 814 P.2d (1991) [A-66].

<sup>93</sup> *Capitol Hill Meth. Church v. Seattle*, 52 Wn.2d 359, 368, 324 P.2d 1113 (1958) [A-80].

2. *AS TO: The Port's implication that Erickson's appeal is frivolous and "totally devoid of merit"* *Response*, p 36-7.

P&N claimed title to The Property by BSIP and short plat legal descriptions, leasing Erickson's land, and not acquiring utility rights thereon as required by The City. P&N's 1989 quit claim deeds to "K" Street (projected) in SDC and to ½ of "K" Street are colors of title.

### 3. *Sanctions Are Not Justified*

RAP 18.9(a)<sup>94</sup> is the equivalent to CR 11 in the lower courts.<sup>95</sup> Sanctions are discretionary,<sup>96</sup> and reasonably limited to actual costs.<sup>97</sup>

Debatable first impression cases are not sanctionable.<sup>98</sup> Debatable issues of public importance are not sanctionable.<sup>99</sup> Cases of little merit but not frivolous are not sanctioned.<sup>100</sup> Frivolousness is undebatable claims.<sup>101</sup>

P&N's conclusory statements, suppositions, and reliance on prior opinions have caused much delay and aggravation and are an invidious discrimination against *pro se* litigants, the mentally challenged,<sup>102</sup> and the

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<sup>94</sup> RAP 18.9(a) [A-67].  
<sup>95</sup> *Right-Price Recreation, LLC v Connells Prairie Community Council*, 146 Wn.2d 370, 384-85, 46 P.3d 789 (2002) [A-68].  
<sup>96</sup> *Harrington v Pailthorp*, 67 Wn. App. 901, 910, 841 P.2d 1258 (1992), review denied, 121 Wn.2d 1018 (1992) [A-69].  
<sup>97</sup> *Madden v Foley*, 83 Wn. App. 385, 392, n 15, 922 P.2d 1364 (1996) [A-70].  
<sup>98</sup> *Linda D. v Fritz C.* 38 Wn. App. 288, 301, 687 P.2d 223 (1984) [A-71].  
<sup>99</sup> *Cary v Allstate Insurance*, 78 Wn. App. 434, 440-41, 897 P.2d 409 (1995) [A-72].  
*Moorman v Walker*, 54 Wn. App. 461, 466, 733 P.2d 887, 890 (1989) [A-73].  
<sup>100</sup> *Lockhart v Greive*, 66 Wn. App. 735, 744-45, 834 P.2d 64 (1992) [A-74].  
<sup>101</sup> *Dewitt v Mullen*, 193 Wn. App. 548, 560, 375 P.3d 694 (2016); *Harrington v Pailthorp*, 67 Wn. App. at 913 [A-75].  
<sup>102</sup> *Boddie v Connecticut*, 401 U.S. at 375-76, 386 [A-78].

indigent, and impairs Erickson's pursuit of resolution.<sup>103</sup> This court may issue sanctions when an abuse left unchecked encourages future abuses.<sup>204</sup>

*1. The Port Previously Assumed All Litigation Costs*

'Tis not a frivolous claim when The Port's short plat and BSIP assert ownership of Erickson's lands and assume all legal costs for any surveyor's errors, CP 326-27 [C-36]; CP 125 (BSIP) [C-83]. Sanctions against Erickson are not appropriate. Erickson is indigent, CP 1145-46.

**IV. CONCLUSION**

Prior facts and law, as well as P&N's confusion over tax "lots not being vested in adjoining streets"; and the court's reliance on one LG report who admitted a conflict of interest; and other proven claims justifies reversing orders of summary judgment, hearing dismissed claims (ownership compensation for "K" Street lands, utility taking, hydro production rights, The Port's PU&TC acquisition, fee title in Marine Drive, The Port's negligent misrepresentation); not dismissing claims with prejudice, and this court requiring the appointment of counsel to represent Erickson to establish "equality under law" for due process violations.

Dated this 25<sup>th</sup> day of November, 2017.

  
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<sup>103</sup> *Boddie v Conn.*, 401 U.S. at 380-81

[A-76].

<sup>104</sup> *State v S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000)

[A-77].

## APPENDIX A – CASE & RCW QUOTES

A-1

RAP 10.3(c) [“A reply brief should be limited to a response to the issues in the brief to which the reply brief is directed.”].

A-2

RAP 1.2(b) [“(b) Words of Command. Unless the context of the rule indicates otherwise: ‘Should’ is used when referring to an act a party or counsel for a party is under an obligation to perform. . . .”].

A-3

*Wright v B&L Props., Inc.*, 113 Wn. App. 450, 458, 53 P.3d 1041 (2002) [“‘Brokaw did not raise the issue in his opening brief to this court. Instead, he raised the issue for the first time in his reply brief. An issue raised and argued for the first time in a reply brief is too late to warrant consideration.’ *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Nonetheless, because the Wrights addressed the issue in their respondents' brief to this court, we will address it here.”].

A-4

*Donald v Vancouver*, 43 Wn. App. 880, 883, 719 P.2d 966 (1986) [“Findings of fact and conclusions of law are not necessary on summary judgment, CR 52(a)(5)(B), and, if made, are superfluous and will not be considered by the appellate court. DUCKWORTH v BONNEY LK., 91 Wn.2d 19, 21-22, 586 P.2d 860 (1978); DODD v GREGORY, 34 Wn. App. 638, 641, 663 P.2d 161, REVIEW DENIED, 100 WN.2d 1007 (1983).”].

A-5

*Schmidt v Cornerstone Invest.*, 115 Wn.2d 148, 165, 795 P.2d 1143 (1990) [“This court is not obligated to decide all the issues raised by the parties, but only those which are determinative. Hall American Nat'l Plastics, Inc., 73 Wn.2d 203, 205, 437 P.2d 693 (1968)”].

A-6

*Haines v Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed.2d 652 (1972) [“allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears ‘beyond doubt that the plaintiff can prove no set of facts in support of

his claim which would entitle him to relief.’ Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944).”].

A-7

Robinson v Seattle, 119 Wn.2d 34, 53, 830 P.2d 318 (1992) [“We have on an earlier occasion stated that the burden of providing this public benefit was one best borne by the community rather than by individuals . . . San Telmo Assocs. v. Seattle, 108 Wn.2d 20, 25, 735 P.2d 673 (1987).”].

A-8

Baldwin County Welcome Center v Brown 466 U.S. 147, 164-65, 104 S. Ct. 1723, 80 L. Ed. 2d 196 (1984) [“Rule 8(f) provides that ‘[all] pleadings shall be so construed as to do substantial justice.’ We frequently have stated that *pro se* pleadings are to be given a liberal construction. E. g., Haines v. Kerner, 404 U.S. 519 (1972). If these pronouncements have any meaning, they must protect the *pro se* litigant who simply does not properly denominate her motion or pleading in the terms used in the Federal Rules. If respondent was not pleading for relief in the District Court, one wonders what the majority thinks she was doing there. I therefore conclude that had the Federal Rules of Civil Procedure been strictly followed in this case -- Rules which eschew the sterile formalism which permeated the approach to this case in the District Court and in this Court -- the question certified for interlocutory review would have never been presented. However, that question was answered by the court below, albeit in an unpublished opinion with no precedential significance, and the majority today rushes to disagree with that opinion,”].

A-9

Hughes v Rowe et al., 449 U.S. 5, 9-10, 101 S. Ct. 173, 66 L. Ed. 2d 163, 49 (1980) [“It is settled law that the allegations of such a complaint, ‘however inartfully pleaded’ are held ‘to less stringent standards than formal pleadings drafted by lawyers . . .’ Haines v Kerner, 404 U.S. 519, 520 (1972). See also Maclin v Paulson, 627 F.2d 83, 86 (CA 1980); French v Heyne, 547 F.2d 994, 996 (CA7 1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. And, of course, the allegations of the complaint are generally taken as true for purposes of a motion to dismiss. Cruz v Beto, 405 U.S. 319, 322 (1972).”].

A-10

*Drone v Hutto*, 565 F.2d 543, 544-45 (1977) [“Moreover, in circumstances where a petitioner’s poverty forces him to proceed *pro se*, a court ought not to reject on technical grounds a right asserted within the hand-drawn (*pro se*) complaint.”].

A-11

GR 33(c)(1)(C) [“make its decision on an individual and case-specific basis with due regard to the nature of the applicant’s disability and the feasibility of the requested accommodation.”].

A-12

Washington State Access to Justice Board Justice Without Barriers Committee, Washington State Ensuring Equal Access for People with Disabilities – A Guide for Washington Administrative Proceedings (May 2011) p 13, 16, 26, 27, 34, 35 [p 13, “**Cognitive disabilities . . .** It is also important to remember that it is the *impairment* that is being accommodated, not the diagnosis.”; p 16, “**Suggestions for Accommodation Cognitive Impairment . . .** Appoint a legal advocate.”; p 25, “**Making Paperwork Easier to Complete: . . .** Appoint a legal advocated”; p 25, “**Coping with Stress and Emotions: . . .** Appoint a legal advocated”; p 26, “**Disorganization: . . .** Appoint a legal advocated.”; p 27, “**Writing: . . .** Appoint a legal advocated.”; p 28, “**Support Persons** Many people with disabilities, especially those with cognitive disabilities, are intimidated or confused by judicial proceedings. When such individuals appear *pro se*, the assistance of someone they know well, or who is skilled at explaining court proceedings in simple terms, may constitute a very effective accommodation. . . .”; p 34, “**Get Over It: Preconceptions and Stereotypes . . .** If we believe people have a right to equal justice, and if we remember that all of us can contribute to change, things will work out better and better. Treating everyone exactly the same way does not ensure fairness. Truly equal treatment of people with disabilities often means treating them differently. Fn #86 (WAC 162-26-060(2))”; p 35, “**Conclusion:** Fully accommodating an impairment is absolutely vital to ensuring that a person’s due process rights are not violated. Justice can only be served if every individual has a full and meaningful opportunity to be fairly heard.”].

A-13

Ensuring Equal Access for People with Disabilities, p 34 [“If we believe people have a right to equal justice, and if we remember that all of us can contribute to change, things will work out better and better.

Treating everyone exactly the same way does not ensure fairness. Truly equal treatment of people with disabilities often means treating them differently. Fn #86 (WAC 162-26-060(2))”].

A-14

*Williams v Oklahoma*, 395 U.S. 458, 459-60, 89 S. Ct. 1818, 23 L. Ed. 2d 440 (1969) [“This court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasonable distinctions that can only impede open and equal access to the courts. *Griffin v Illinois*, 351 U.S. 12; *Douglas v California*, 372 U.S. 353; *Land v Brown*, 372 U.S. 477; *Draper v Washington*, 372 U.S. 487’ *Rinaldi v Yeager* 384 U.S. 305, 310-311 (1966)”].

A-15

RPC 1.7 (b)(1) [“. . . (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client. . . .”].

A-16

RCW 4.84.010 [“(1) Filing fees; . . . (3) Fees for service by publication (CP 360-62 (Aug. 19, 2016, CP 1141-42); (4) Notary fees . . . (5) Reasonable expenses . . . incurred in obtaining reports and records, which are admitted into evidence at trial . . .(6) . . . witness fees.”].

A-17

*In re Dependency of MSR*, 174 Wn.2d 1, 12, 271 P.3d 234 (2012) [“RCW 13.34.100(6)(f) (‘If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child’s position.’). . . .”].

A-18

RCW 65.12.090 [“The judges . . . shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. . . .”].

A-19

RCW 65.12.110 [“. . . examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and . . . he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including certificate of his opinion upon the title. . . . If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to

withdraw his application. . . .”].

A-20

RCW 65.12.040 [“. . . Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all person, known, or unknown, and all liens and encumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title.” and advise the Justice as to validity of the Torrens Applicant' s land claims, RCW 65.12.110.”].

A-21

*Scott v Plante*, 532 F.2d 939, 949-50 (1976) [“. . . The forgoing outline of the legal and factual issues presented by Scott’s several complaints, when compared with the district court’s treatment of them, demonstrates that more serious consideration should have been given to Scott’s repeated requests for the appointment of counsel pursuant to 28 U.S.C. @ 1915(d). Certainly in New Jersey, where the bar has a long tradition of voluntary service, and where three fine law schools engage in extensive public service, there was no need for the court to go it alone.”].

A-22

Hall, Daniel E., & John P. Feldmeir, 2009. *Constitutional Values*, 432, Upper Saddle River:Pearson Prentice Hall [“the person who represents himself has a fool for a client.”].

A-23

*Peterson v Nadler*, 452 F.2d 754, 757-58 (1971) [“In the overall interests of the proper administration of justice we think this case presents circumstances requiring appointment of counsel The complaint states a fraudulent conversion of plaintiff’s property. The answer admits the sale of the automobile but alleges mitigating defenses. Plaintiff is admittedly an indigent. For obvious reasons he alone cannot investigate the case or hope to obtain evidence to prove his allegations. The court will be aided by appearance of counsel at all proceedings. These circumstances fully justify the appointment of counsel to represent plaintiff and the failure to do so here would amount to an abuse of discretion.”].

A-24

7<sup>th</sup> Amendment [“In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . . .”].

A-25

*Beacon Theaters v Westover*, 359 U.S. 500, 509-10, 79 S. Ct. 948, 3 L. Ed. 2d 988 (1959) [“Thus, the justification for equity's deciding legal issues once it obtains jurisdiction, and refusing to dismiss a case, merely because subsequently a legal remedy becomes available, must be re-evaluated in the light of the liberal joinder provisions of the Federal Rules which allow legal and equitable causes to be brought and resolved in one civil action. Fn #14. Similarly the need for, and therefore, the availability of such equitable remedies as Bills of Peace, *Quia Timet* and Injunction must be reconsidered in view of the existence of the Declaratory Judgment Act as well as the liberal joinder provision of the Rules. Fn #15. This is not only in accord with the spirit of the Rules and the Act but is required by the provision in the Rules that ‘the right to trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved . . . inviolate.’ Fn. #16. . . .”].

A-26

*Lytle v Household Manufacturing, Inc.*, 494 U.S. 545, unk. 110 S. Ct. 1331, 108 L. Ed. 2d 504 (1990) [“It would be anomalous to hold that a district court cannot deprive a litigant of his right to a jury trial by resolving an equitable claim before a jury hears a legal claim raising common issues. . . . Our conclusion is consistent with this Court’s approach in cases involving a wrongful denial of a petitioner’s right to a jury trial on legal issues. . . . See *Meeker v Ambassador Oil Corp.*, (1963) (per curiam) (reversing trial court’s decision to try equitable claims first and thereby to bar jury trial on legal claims that relied on the same facts); . . . .”].

A-27

*Colgrove v Battin*, 413 U.S. 149, 160, 93 S. Ct. 2448, 37 L. Ed. 2d 522 (1973) [“we conclude that a jury of six satisfies the Seventh Amendment's guarantee of trial by jury in civil cases. Fn. #17.”].

A-28

*In re Dependency of MSR*, 174 Wn.2d 1, 13, 271 P.3d 234 (2012) [“proceedings have a fundamental liberty interest in the right to parent their children and a constitutional right to counsel when the State seeks to terminate that right. *In re Welfare of Myricks*, 85

Wn.2d 252, 253-54, 533 P.2d 841 (1975); *In re Welfare of Luscier*, 84 Wn.2d 135, 136-39, 524 P.2d 906 (1974). We concluded: ‘The right of a natural parent to the companionship of his or her child must be included within the bundle of rights associated with marriage, establishing a home and rearing children. This right must therefore be viewed as ‘so rooted in the traditions and conscience of our people as to be ranked as fundamental.’ *Snyder v. Massachusetts*, 291 U.S. 97, 105, 78 L. Ed. 674, 54 S. Ct. 330, 90 ALR 575 (1934), cited with approval in *Griswold v. Connecticut*, 381 U.S. 479, 487, 14 L. Ed. 2d 510, 85 S. Ct. 1678, (1965) [, *Snyder* overruled in part on other grounds by *Malloy v. Hogan*, 378 U.S. 1, 84 S. Ct. 1489, 12 L. Ed. 2d 653 (1964)]. In *May v. Anderson*, 345 U.S. 528, 533, 97 L. Ed. 1221, 73 S. Ct. 840 (1953), the right of a parent to a child's companionship was considered to be ‘far more precious ... than property rights’ and in *In re [Welfare of] Gibson*, 4 Wn. App. 372, 379, 483 P.2d 131 (1971), cited with approval in *In re Luscier*, *supra*, the right was characterized as even ‘more precious ... than the right of life itself.’ *Myricks*, 85 Wn.2d at 253-54 (second and fourth alterations in original). The legislature codified this requirement in RCW 13.34.090. Both *Myricks* and *Luscier* predated *State v. Gunwall*, 106 Wn.2d 54, 58, 720 P.2d 808 (1986), by more than a decade, so not surprisingly, the court did not specifically consider what process was due under the United States Constitution as opposed to the Washington Constitution.”].

A-29

*Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S. Ct. 893, 47 L. Ed. 2d. 18 (1976) [“[14] These decisions underscore the truism that ‘[d]ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.’ *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). ‘[D]ue process is flexible and calls for such procedural protections as the particular situation demands.’ *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. *Arnett v. Kennedy*, *supra*. at 167-168 (POWELL, J., concurring in part); *Goldberg v. Kelly*, *supra*. at 263-266; *Cafeteria Workers v. McElroy*, *supra*. at 895. More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of

an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. See, e.g., Goldberg v. Kelly, supra, at 263-271.”].

A-30

*In re Dependency of MSR*, 174 Wn.2d 1, 14, 271 P.3d 234 (2012)[“¶17 Since that time, the United States Supreme Court has considered whether the federal constitution requires the State to provide counsel to all parents facing termination proceedings and found it did not. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 31-32, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981). To analyze the question, the court deployed the three part *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), test. Under *Mathews*, the court considers ‘the private interests at stake, the government's interest, and the risk that the procedures used will lead to erroneous decisions.’ *Lassiter*, 452 U.S. at 27 (citing *Mathews*, 424 U.S. at 335). The United States Supreme Court found no blanket right to appointed counsel, but it noted that due process could demand appointment of counsel in a particular case. As the Court reasoned, ‘[I]n a given case [where] the parent's interests were at their strongest, and State's interests were at their weakest, and the risks of error were at their peak, it could not be said that the [*Mathews*] factors did not overcome the presumption against the right to appointment counsel.’ *Id.* at 31.”].

A-31

*Wood v Housewright*, 900 F.2d 1332, 1335-36 (1990) [“28 U.S.C. § 1915(d) provides that the district court may appoint counsel for indigent civil litigants. The district court refused to appoint counsel for Wood. That decision was not an abuse of discretion. ‘Counsel should only be appointed in exceptional circumstances, based on such factors as the likelihood of success on the merits and the ability of the plaintiff to articulate his claims in light of their complexity. *Wilborn v. Escalderon*, 789 F.2d 1328 at 1331 (9th Cir. 1986). The instances that Wood claims indicate the presence of these factors are difficulties which any litigant would have in proceeding pro se; they do not indicate exceptional factors.’”];

*Terrell v Brewer*, 935 F.2d 1013, 1017 (1990) [“The district court denied Terrell's motion for appointment of counsel pursuant to 28 U.S.C. § 1915(d). We review this for an abuse of discretion. *Oliva v. Heller*, 839 F.2d 37, 40 (2d Cir. 1988) (*Bivens* action); *McElvea v. Babbitt*.

833 F.2d 196, 199-200 (9th Cir. 1987) (section 1983 action). The court may appoint counsel under *section 1915(d)* only under 'exceptional circumstances.' 'A finding of exceptional circumstances requires an evaluation of both 'the likelihood of success on the merits and the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.' Neither of these factors is dispositive and both must be viewed together before reaching a decision.' Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (citations omitted) (section 1983 action); See Smith-Bey v. Hospital Adm'r, 841 F.2d 751, 760 (7th Cir. 1988) (Bivens action) (citing Maclin v. Freake, 650 F.2d 885, 887-88 (7th Cir. 1981)). The trial court did not abuse its discretion by refusing to appoint counsel for Terrell. Terrell demonstrated sufficient writing ability and legal knowledge to articulate his claim. The facts he alleged and the issues he raised were not of substantial complexity. The compelling evidence against Terrell made it extremely unlikely that he would succeed on the merits."].

A-32

*Peterson v Nadler*, 452 F.2d 754, 758 fn #6 (1971) ["Under the predecessor to 28 U.S.C. @1915 in approving the appointment of counsel in a civil tort case filed by an indigent person it was early recognized: 'Not only is he to be relieved from securing the costs of his adversary, but an attorney is to be provided for him by the court, who will prosecute his cause of action without stipulating for some compensation in the event of success larger than the quantum meruit. In other words, the 'poor citizen' will not be compelled, by reason of his poverty, to enter into any contract more oppressive than such as could be made by his more fortunate fellow citizens. The attorney assigned by the court, in the event of nonsuccess, will, of course, receive nothing; in the event of final success, he may apply to the court for an order fixing a fair compensation for the services he may actually render, which will be paid to him out of the fund recovered, and the balance only paid over to plaintiff. [new paragraph] 'if the attorney who brought the action is willing to continue the litigation on those terms, he will be assigned to represent plaintiff; if not, the court will find some other attorney to prosecute her case.' 86 F. at 220-21. [new paragraph] Lawyers have long severed in state and federal practice as appointed counsel for indigents in both criminal and civil cases. The vast majority of the bar have viewed such appointments to be integrally within their professional duty to provide public service. Only rarely are lawyers asked to serve in civil matters. We have the

utmost confidence that lawyers will always be found who will fully cooperate in rendering the indigent equal justice at the bar.”].

A-33

*In re Estate of Winslow*, 30 Wn. App. 575, 578-79, 636 P.2d 505 (1981) [“Betty's husband also assigns error to the trial court's dismissal, on James, Jr.'s motion, of the petition for accounting. In ruling on the motion, the trial court considered both the pleadings as well as other papers in the clerk's file. Thus, the motion is to be considered one for summary judgment, CR 12(c); Vaughn v. Vaughn, 23 Wn. App. 527, 529 n.2, 597 P.2d 932, review denied, 92 Wn.2d 1023 (1979).”].

A-34

*Mathews v Eldridge*, 424 U.S. 319, 331, 96 S. Ct. 893, 47 L. Ed. 2d. 18 (1976) [“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the *Due Process Clause of the Fifth or Fourteenth Amendment*.”].

A-35

*Hallman v Sturm Ruger & Co.*, 31 Wn. App. 50, 53, 639 P.2d 805 (1982) [“The trial judge has a responsibility to administer justice and to insure that order is maintained in the litigation. He must have the measure of discretion to take steps to carry out his responsibility. United States v. Dinitz, 538 F.2d 1214 (5th Cir. 1976), cert. denied, 429 U.S. 1104, 51 L. Ed. 2d 556, 97 S. Ct. 1133 (1977).”].

A-36

*Mathews v Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d. 18 (1976) [“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ Armstrong v. Manzo, 380 U.S. 545, 552 (1965). See Grannis v. Ordean, 234 U.S. 385, 394 (1914).”].

A-37

*Woodhead v Discount Waterbeds, Inc.*, 78 Wn. App. 125, 130, 896 P.2d 66 (1995) [“Washington courts not to resort to dismissal lightly. *Anderson v. Mohundro*, 24 Wn. App. 569, 575, 604 P.2d 181 (1979) (because dismissal is the most severe sanction which a court may apply, its use must be tempered by the careful exercise of judicial discretion to assure that its imposition is merited), review denied, 93 Wn.2d 1013 (1980).”].

A-38

RCW 65.12.110 [“Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court.”].

A-39

*Betts v Brady*, 316 U.S. 455, 475-76, 62 S. Ct. 1252, 86 L. Ed. 1595 (1942) overruled in part (double jeopardy) by *Benton v. Maryland*, 395 U.S. 784 (1969) [“MR. JUSTICE BLACK, dissenting, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MURPHY concur. . . . This Court has just declared that due process of law is denied if a trial is conducted in such manner that it is ‘shocking to the universal sense of justice’ or ‘offensive to the common and fundamental ideas of fairness and right.’ ‘On another occasion, the U.S. Supreme Court recognized that whatever is ‘implicit in the concept of ordered liberty’ and ‘essential to the substance of a hearing’ is within the procedural protection afforded by the constitutional guaranty of due process.’ *Palko v. Connecticut*, 302 U.S. 319, 325, 327 (1937)”].

A-40

RCW 4.16.020 [“**Actions to be commenced within ten years – Exceptions.** The period prescribed for the commencement of actions shall be as follows: Within ten years: (1) For actions for the recovery of real property. . . .”].

A-41

CR 6(a) [“. . . The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. . . .”].

A-42

*Motor Contract Co. v Van Der Volgen*, 162 Wash. 449, 454, 298 Pac. 705 (1931) [“Whether a contract is against public policy is a question of law for the court to determine from all the circumstances of each case. It is clearly to the interest of the public that persons should not be unnecessarily restricted in their freedom to make their own contracts; and therefore agreements are not to be held void as being contrary to public policy unless they are clearly contrary to what the legislature or judicial decision has declared to be the public policy or they manifestly tend to injure the public in some way. On the other hand the interests of the public do require that there shall be some restrictions on the freedom of persons to enter into contracts; and if an agreement binds a party to do or not to do anything, the doing or mission of which is manifestly injurious to the public interests, the courts must declare it contrary to public policy and therefore illegal and void.’ 13 C. J., p 427, SS 366.”].

A-43

*Proprietors of Charles River Bridge v Proprietors of Warren Bridge*, 36 U.S. 420, 547-48, 11 Peters 420, 9 L. Ed. 773 (1837) [“And in a country like ours, free, active and enterprising, continually advancing in numbers and wealth, new channels of communication are daily found necessary, both for travel and trade, and are essential to the comfort, convenience and prosperity of the people. A state ought never to be presumed to surrender this power, because, like the taxing power, the whole community have an interest in \*preserving it undiminished. And when a corporation alleges, that a state has surrendered, for seventy years, its power of improvement and public accommodation, in a great and important line of travel, along which a vast number of its citizens must daily pass, the community have a right to insist, in the language of this court, above quoted, ‘that its abandonment ought not to be presumed in a case, in which the deliberate purpose of the state to abandon it does not appear.’ The continued existence of a government would be of no great value, if, by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation, and the functions it was designed to perform, transferred to the hands of privileged corporations,. The rule of construction announced by the courts, was not confined to the taxing power, nor is it so limited, in the opinion delivered. On the contrary, it was distinctly placed on the ground, that the interest of the community were concerned in preserving, undiminished, the power then in question; and whenever any power

of the state is said to be surrendered or diminished, whether it be the taxing power, or any other affecting the public interest, the same principle applies, and the rule of construction must be the same. No one will question, that the interests of the great body of the people of the state, would, in this instance, be affected by the surrender of this great line of travel to a single corporation, with the right to exact toll, and exclude competition, for seventy years. While the rights of private property are sacredly guarded, we must not forget, that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation.”].

A-44

Laws of 1909, ch. 127, p 422 [“[S.B. 158.] FOR RELIEF OF CHICAGO, MILWAUKEE AND PUGET SOUND RAILWAY. . . . Section 1. That the be, and hereby is, appropriated out of any money in the state treasury not otherwise appropriated, the sum of five hundred twenty-five and eight hundredths (\$525.08) dollars for the relief of the Chicago, Milwaukee and Puget Sound Railway Company (formerly called Chicago, Milwaukee and St. Paul Railway Company of Washington) for money paid the State of Washington for rights-of-way across lands of said state, which rights-of-way were surrendered and rights-of-way upon new locations were purchased from the state; . . .”].

Laws of 1925, ch 95, p 140 [“For Relief of the Oregon-Washington Railroad and Navigation Company for refund of money paid for state land under right-of-way certificates Nos. 205, 285, 286, 288, 287 and 209 and since relinquished to the State of Washington . . . \$3,528.10”]

A-45

Laws of 1889, ch. 17, @ 3, p 527-28 [“indicating the place from and to which such extension or branch is to be constructed, and the estimated length of such extension or branch, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall . . . have all the rights and privileges to make such . . . so to do by articles of incorporation. . . .”].

A-46

Laws of 1909, ch. 196, @ 1, p 699 [“including the exercise of the power of eminent domain. . . .”]

A-47

Laws of 1889, ch. 17, @ 4, p 528 [“All such railroad corporations, consolidated companies and their branches, including their stock, property and franchises, within the jurisdiction of this state, shall be subject to and controlled by the constitution and laws of this state.”].

A-48

*Proprietors of Charles River Bridge v Proprietors of Warren Bridge*, 36 U.S. 420, 547, 11 Peters 420, 9 L. Ed. 773 (1837) [“and the right to impose this tax was resisted by the Providence Bank, upon the ground, that if the state could impose a tax, it might tax so heavily as to render the franchise of no value, and destroy the institution; that the charter was a contract, and that a power which may in effect destroy the charter is inconsistent with it, and is impliedly renounced by granting it.”].

A-49

*Robinson v Sliver Lake R. & L. Co.*, 153 Wash. 261, 272-73, 279 P. 1109 (1929) [“It is possible that, if the company's original articles of incorporation had been as amended in 1921, it could be argued with some show of reason that the maintenance of its boom as a public service would be beyond its corporate power, though there are respectable holdings of the courts, in substance, to the effect that under the circumstances here shown the company would not be permitted to assert its want of corporate power in avoidance of its public service duty while holding and enjoying its boom location in the manner here shown. However, the company appropriated its boom location and constructed and maintained its boom thereon when it had the power to do so as a public service boom corporation. Can it, by mere amendment of its articles of incorporation, strip itself of its booming public service duty, at the same time continuing the maintenance of its boom in the navigable waters of the state, which it can do only as accompanied by booming public service duty under the statutory provisions above quoted? We are decidedly of the opinion that the company cannot escape that duty by mere amendment of its articles of incorporation. To accomplish that result it must go farther; that is, it must abandon its appropriated booming location and remove its boom therefrom. So we conclude upon this branch of the case that Robinson had a right to demand of the company, and have the company render to him, booming service as a public service.”].

A-50

*Munn v Ill.*, 94 U.S. 113, 126, 24 L. Ed. 77 (4 Otto 1877) [decided 1876] [“Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit.”].

A-51

*United States v Causby*, 328 U.S. 256, 266, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946) [“Our holding that there was an invasion of respondents' property is thus not inconsistent with the local law governing a landowner's claim to the immediate reaches of the superadjacent airspace.”].

A-52

*Lawson v State*, 107 Wn.2d 444, 457-58, 461, 730 P.2d 1308 (1986) [“Thus, we hold these reversionary interests are property protected under Const. art. 1, § 16. It therefore follows King County cannot acquire the Kenmore-Woodinville right of way from Burlington Northern without payment of just compensation to the reversionary interest holders. If the County takes this right of way and commences to build a recreation trail, it does so in violation of the constitution . . . It is necessary, however, that a public entity proceed in a constitutional fashion in acquiring the way necessary for such trails.”];

A-53

*RTC Transport v Walton*, 72 Wn. App. 386, 391, 864 P. 2d 969 (1994) [“. . . pleadings under the rules simply may be a general summary of the party's position that is sufficient to advise the other party of the event being sued upon . . .”. 5 C. Wright & A. Miller, *Federal Practice* § 1202, at 69 (1990). See also footnote 4, at page 69, regarding the injustice of strict pleading requirements (quoting *Degraw v. Elmore*, 50 N.Y. 1, 7 (1872)): ‘This question of pleading has been a terror to suitors for many years before the Code. Legislatures have sought in vain to give relief \* \* \*. Probably in not one case in ten thousand has injustice been done from the ignorance of a suitor as to the matters to be tried. But the cases of loss and damage to suitors by some defect of pleading have been innumerable.’”].

*Schoening v Grays Harbor Cmty. Hosp.*, 40 Wn. App. 331, 698 P. 2d 593 (1985), modified, denial review (1985) [“The hospital argues that the theory of corporate negligence was not properly raised below. We

disagree. While paragraph 1.2 of plaintiffs' amended complaint is not a vision of precise pleading it seems sufficient to put defendants on notice that plaintiffs are seeking to establish corporate negligence. Fn#4: 'paragraph 1.2 states: 'Defendant Grays Harbor Community Hospital is a medical facility doing business in Grays Harbor County, Washington and at all times material hereto was responsible and liable for the services the Defendant doctors provided on the hospital premises under the auspices, employment, or agency of the Hospital and as part of the Hospital enterprise.' ”].

A-54

*Finley v Jordan*, 8 Wn. App. 607, 608, 508 P.2d 636 (1973) [“Jordan argues that the county’s conveyance to Finley by a metes and bounds description should work an exception to the rule set forth in *Turner v Davisson*, 47 Wn.2d 375, 287 P.2d 726 (1955), that where a street has been vacated by operation of law, a conveyance by lot or block of property abutting on the vacated street carries with it the fee to the center of the street, unless the street is expressly excluded. It is settled that an intention to pass title to the center line is ‘always presumed’ and that a contrary intent to withhold such title ‘must clearly appear.’ *Bradley v Spokane & Inland Empire R.R.*, 79 Wash. 455, 460, 140 P. 688 (1914). We see no reason why the metes and bounds description in the county’s conveyance to Finley should alter the rule. {Fn #1: “In *Peterson v Peters*, 6 Wn. App. 908, 496 P.2d 970 (1972), we also dealt with a metes and bounds description of portions of platted property, but in that case we held that there was substantial evidence that the intent of the parties was to exclude the vacated street.”} Since Jordan has adduced no evidence of an intent by any of Finley’s predecessors in title to pass less than title to the center line, we conclude that the conveyances are sufficient to pass title to the strip to Finley.”].

A-55

*William A Pederson v Kingston Peters*, 6 Wn. App. 908, 913, 496 P.2d 970 (1972) [“In *Turner*, 47 Wn.2d at 385, the court stated the applicable rule as follows: ‘It is a general rule that the dedication of a street for public use conveys only an easement, and that, where a lot or block is conveyed as such, without reservations or exceptions, the conveyance carries with it the fee to the center of the street. (Italics ours.)’ The court went on to state a similar rule applicable in a case where a dedicated street has been vacated by operation of law, and the contrasting rule applicable in the case of a formal vacation: ‘Where a dedicated street has been vacated by operation of law, but

there is nothing in the public records to show the vacation, the same rule applies, and a conveyance by lot or block carries with it the fee to the center of the street, unless the street is expressly excluded. . . .”].

A-56

*Rowe v. James*, 71 Wash. 267, 271, 128 P. 539 (1912) [“We think the correct view is that, when an owner plats land bounded by a street included in his plat, and owns nothing beyond the street, and conveys all his land abutting upon the street without reservation, the purchaser acquires the fee to the entire street (case citations omitted.)”].

*Christian v Purdy*, 60 Wn. App. 798, 803 fn #5, 808 P.2d 164 (1991) [“fn #5: RCW 58.17.212, enacted in 1987, generally provides that where a road to be vacated is contained wholly within a subdivision and is a part of the boundary of the subdivision, title vests with those property owners within the subdivision. This statute does not apply here as it was not in effect at the time of the vacation of Wagner Street in 1983.”].

A-57

RCW 58.17.212 [“Title to the vacated property shall vest with the rightful owner as shown in the county records . . . When the road or street that is to be vacated was contained wholly within the subdivision and is part of the boundary of the subdivision, title to the vacated road or street shall vest with the owner or owners of property contained within the vacated subdivision. [1987 c 354 § 3.]”].

A-58

RCW 7.28.080 [“**Color of title to vacant and unoccupied land.** Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section: PROVIDED, HOWEVER, If any person having a better paper title to said vacant and unoccupied land shall, during the said term of seven years, pay the taxes as assessed on said land for any one or more years of said term of seven years, then and in that case such taxpayer, his heirs or assigns, shall not be entitled to the benefit of this section.”].

A-59

RCW 58.17.040 [“PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line. . . .”].

A-60

RCW 64.04.050 [“. . . Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his or her heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention.”].

A-61

*Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 270 fn #5, 285, 937 P.2d 1082 (1997) [“The ‘vacation’ of streets is an exclusive method by which the owners of properties abutting street may petition the legislative authority of a city to extinguish the public’s easement for public travel on a street’s right-of-way and allow title to the underlying street property to be vested in the abutting property owners.”].

A-62

RCW 35.79.050 [“No vested rights shall be affected by the provisions of this chapter. [1965 c 7 @ 35.79.050. Prior: 1901 c 84 @ 4; RRS @ 9300].”];

*London v Seattle*, 93 Wn.2d 657, 666, 611 P.2d 781 (1980) [“RCW 35.79.050 mandates that vested rights are not to be affected upon street vacation. *See Taft v. Washington Mut. Sav. Bank*, 127 Wash. 503, 221 P. 604 (1923).”].

A-63

RCW 35.79.030 [“A certified copy of such ordinance shall be recorded by the clerk of the legislature authority and in the office of the auditor of the county in which the vacated land is located.”].

A-64

*State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) [“Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously. *State ex rel. Clark v.*

*Hogan*, 49 Wn.2d 457, 303 P.2d 290 (1956). Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. *MacKay v. MacKay*, 55 Wn.2d 344, 347 P.2d 1062 (1959); *State ex rel. Nielsen v. Superior Court*, 7 Wn.2d 562, 110 P.2d 645, 115 P.2d 142 (1941).”].

*Id.* at 34: [“**To assert an abuse of discretion implies a lack of use of any discretion at all** (emphasis added by Erickson). The exercise of an honest judgment, regardless of its erroneous appearance, is not an abuse of discretion, and simply because judicial opinion differs as to the exercise of one's discretion, does not make such exercise an abusive one. *Balise v. Underwood*, 71 Wn.2d 331, 428 P.2d 573 (1967); *Stroup v. Raymond*, 183 Pa. 279, 38 A. 626 (1897); *Belock v. State Mut. Fire Ins. Co.*, 106 Vt. 435, 175 A. 19 (1934); *Malfait v. Malfait*, 54 Wn.2d 413, 341 P.2d 154 (1959).”].

A-65

*McCarthy v Darman*, 372 Fed. Appx. 346, 350 (2010) [“Thus, we must determine what process McCarthy was due. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). . . What constitutes sufficient process is determined by balancing three factors: (1) the private interest at stake, (2) the risk of ‘erroneous deprivation’ and the value of alternative procedures, and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). Due process usually requires that an individual receive a hearing before he is deprived of an interest; . . . See *Gilbert v. Homar*, 520 U.S. 924, 930, 117 S. Ct. 1807, 138 L. Ed. 2d 120 (1997).”].

A-66

*Reitz v. Knight*, 62 Wn. App. 575, 581 n.4, 814 P.2d (1991) [“In a nonjury trial, an issue or theory not dependent upon new facts may be raised for the first time through a motion for reconsideration and thereby be preserved for appellate review. *Newcomer v. Masini*, 45 Wn. App. 284, 287, 724 P.2d 1122 (1986).”].

A-67

RAP 18.9(a) [“The appellate court on its own initiative or on motion of a party may order a party or counsel, . . . who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay

sanctions to the court. . . .”]

A-68

*Right-Price Recreation, LLC v Connells Prairie Community Council*, 146 Wn.2d 370, 384-85, 46 P.3d 789 (2002) [“The appellate equivalent of CR 11, RAP 18.9, does not provide for sanctions under the circumstances of this case because there is no evidence that Right-Price has used the rules of appellate procedure for the purpose of delay or to file a frivolous appeal.”].

A-69

*Harrington v Pailthorp*, 67 Wn. App. 901, 910, 841 P.2d 1258 (1992), review denied, 121 Wn.2d 1018 (1992) [“The decision to award attorney's fees as a sanction for a frivolous action is left to the discretion of the trial court, and the court's decision will not be disturbed absent a showing of abuse of discretion. *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82 review denied, 113 Wn.2d 1001 (1989).”].

A-70

*Madden v Foley*, 83 Wn. App. 385, 391-92, 922 P.2d 1364 (1996) [“While it is true that sanctions awarded under CR 11 should not exceed the amount expended by the non-offending party in responding to the sanctionable conduct, fn. #15 (*McDonald v. Korum Ford*, 80 Wn. App. 877, 892, 912 P.2d 1052 (1996); *Biggs*, 124 Wn.2d at 201 (when attorney fees are awarded under CR 11, the trial court ‘must limit those fees to the amounts reasonably expended in responding to the sanctionable filings’)). Cohen does not explain why the \$ 2,000 awarded to the defendants here necessarily exceeded the amount of fees actually spent in responding to the lawsuit filed against them. The law is well established that ‘[p]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.’ Fn #16 (*Palmer v. Jensen*, 81 Wn. App. 148, 153, 913 P.2d 413 (1996).)”].”].

A-71

*Linda D. v Fritz C.* 38 Wn. App. 288, 301, 687 P.2d 223 (1984) [“The mother and guardian ad litem urge that this court determine their attorneys' fees to be assessed against the father because, *inter alia*, the issues presented by the father on appeal are frivolous. RAP 18.1. We conclude that the appeal is not frivolous, *see Streater v. White*, 26 Wn. App. 430, 434-35, 613 P.2d 187 (1980), indeed, the issues in this case are issues of first impression in this state and present debatable questions of substantial public importance.”].

A-72

*Cary v Allstate Insurance*, 78 Wn. App. 434, 440-41, 897 P.2d 409 (1995) [“Cases of first impression are not frivolous if they present debatable issues of substantial public importance.”];

A-73

*Moorman v Walker*, 54 Wn. App. 461, 466, 733 P.2d 887 (1989) [“Cases of first impression that present debatable issues of substantial public importance are not frivolous. *Linda D. v. Fritz C.*, 38 Wn. App. 288, 301, 687 P.2d 223 (1984), review denied, 102 Wn.2d 1024 (1984).”].

A-74

*Lockhart*, 66 Wn. App. at 744-45, *Lockhart v Greive*, 66 Wn. App. 735, 744-45, 834 P.2d 64 (1992) [“We have found Lockhart's breach of contract claim to be without merit, but hold it was not frivolous . . . this case had aspects of a case of first impression that presented debatable issues. Under these circumstances, the claim was not frivolous. *Moorman v. Walker*, 54 Wn. App. 461, 466-67, 773 P.2d 887, review denied, 113 Wn.2d 1012 (1989).”].

A-75

*Dewitt v Mullen*, 193 Wn. App. 548, 560, 375 P.3d 694 (2016) [“RCW 4.84.185 allows a court to require a party who brings a frivolous civil claim to pay the prevailing party's attorney fees and costs incurred in opposing the frivolous action. Likewise, RAP 18.9(a) allows this court to sanction a party who files a frivolous appeal. An appeal is frivolous when, considering the entire record and resolving all doubts in favor of the appellant, it does not present any debatable issues about which reasonable minds might differ and ‘is so devoid of merit that there is no possibility of reversal.’; Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010).”];

*Harrington v Pailthorp*, 67 Wn. App. 901, 913, 841 P.2d 1258 (1992), review denied, 121 Wn.2d 1081 (1992) [“Pursuant to RAP 18.1 and RAP 18.9(a), Pailthorp requests an award of attorney's fees on appeal. An appeal is frivolous (and a recovery of fees warranted) ‘if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists.’ In re Marriage of Greenlee, 65 Wn. App. 703, 710, 829 P.2d 1120 (1992) (quoting Chapman v. Perera, 41 Wn. App. 444, 455-56, 704 P.2d 1224, review denied, 104 Wn.2d 1020 (1985)). In this case, Harrington persisted in his malpractice action against Pailthorp despite the lack of any facts or law to support such a claim.

Harrington's appeal presents no debatable issues and is frivolous. Pailthorp is entitled to costs and attorney's fees on appeal.”].

A-76

*Boddie v Conn.*, 401 U.S. 371, 380-81, 383-84, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) [“Just as a generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant, so too a cost requirement, valid on its face, may offend due process because it operates to foreclose a particular party’s opportunity to be heard. The State’s obligation under the Fourteenth Amendment are not simply generalized ones; rather, the State owes to each individual that process which, in light of the values of a free society, can be characterized as due . . . The arguments for this kind of fee and cost requirement are that the State’s interest in the prevention of frivolous litigation is substantial, its use of court fees and process costs to allocate scarce resources is rational, and its balance between the defendant’s right to notice and the plaintiff’s right to access is reasonable. In our opinion, none of these considerations is sufficient to override the interest of these plaintiff appellants in having access to the only avenue open for dissolving their allegedly untenable marriages. Not only is there no necessary connection between a litigant’s assets and the seriousness of his motives in bringing suit, [Fn #9] but it is here beyond present dispute that appellants bring these actions in good faith. . . . The requirement that these appellants resort to the judicial process is entirely a state-created matter. Thus, we hold only that a State may not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amendment, preempt the right . . . without affording all citizens access to the means it has prescribed for doing so. ”]

*Id.* at 383-84 [“Our decisions for more than a decade now have made clear that the differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution.’ *Roberts v LaVallee*, 389 U.S. 40, 42, 88 S. Ct. 19, 19 L. Ed. 2d 41 (1967). See also *Williams v Oklahoma City*, 395 U.S. 458, 89 S. Ct 188, 23 L. Ed. 2d 440 (1969); *Long v District Court of Iowa*, 385 U.S. 192; *Draper v Washington*, 372 U.S. 487, 83 S. Ct. 774, 9 L. Ed. 2d 899 (1963) . . . The reach of the *Equal Protection Clause* is not definable with mathematical precision. But in spite of doubts by some,\* as it has been construed,

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\* See Karst, *Invidious Discrimination*, 16 U.C.L.A.L.Rev. 716 (1969).

rather definite guidelines have been developed: *race* is one (*Strauder v. West Virginia*, 100 U.S. 303; *McLaughlin v. Florida*, 379 U.S. 184); *alienage* is another (*Takahashi v. Fish & Game Comm'n*, 334 U.S. 410); *religion* is another (*Sherbert v. Verner*, 374 U.S. 398); *poverty* is still another (*Griffin v. Illinois, supra*); and *class* or *caste* yet another (*Skinner v. Oklahoma*, 316 U.S. 535”).

A-77

*State v S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000) [“we hold that a trial court’s inherent authority to sanction litigation conduct is properly invoked upon a finding of bad faith. A party may demonstrate bad faith by, inter alia, delaying or disrupting litigation. *Chambers v NASCO, Inc.*, 501 U.S. 32, 46, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). The Court’s inherent power to sanction is ‘governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’ *Id.* at 43 (citation omitted). Sanctions may be appropriate if an act affects ‘the integrity of the court and, [if] left unchecked, would encourage future abuses,’ *Gonzales v Surgidev Corp.*, 120 N.M. 151, 899 P.2d 594, 600 (1995), see also *Chambers*, 501 U.S. at 46 (explaining that sanctions are appropriate if the ‘very temple’ of justice has been defiled’ by the sanctioned party’s conduct); *Goldin v. Bartholow*, 166 F.3d 710, 723 (5th Cir. 1999) (same). This court has held that a finding of ‘inappropriate and improper’ is tantamount to a finding of bad faith. *Wilson v Henkle*, 45 Wn. App: 162, 175, 724 P.2d 1308 (1987). . . .”];

A-78

*Boddie v Connecticut*, 401 U.S. 371, 375-76, 386, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971) [“The legitimacy of the State’s monopoly over techniques of final dispute settlement, even where some are denied access to its use, stands unimpaired where recognized, effective alternatives for the adjustment of differences remain. But . . . has often created serious problems for defendants’ rights. For at that point, the judicial proceeding becomes the only effective means of resolving the dispute at hand and denial of a defendant’s full access to that process raises grave problems for its legitimacy. . . . An invidious discrimination based on poverty is adequate for this case.”].

A-79

*Petersen v Port of Seattle*, 94 Wn.2d 479, 618 P.2d 67, 70 (1980) *as changed Nov. 10, 1980* [“the Port must prove all elements of a prescriptive right to bar the Peterson’s claim. Absent such

prescriptive right, their claim for just compensation is not affected by passage of time.”].

A-80

*Capitol Hill Methodist Church v Seattle*, 52 Wn.2d 359, 368, 324 P.2d 1113 (1958) [“The appellants do not claim that the vacation of east John street was the result of collusion or fraud, and we have previously concluded that their access has not been destroyed, or substantially affected, which would constitute an ‘interference with a vested right’ under our holding in the *Taft* case, *supra*. Therefore, the appellants, whose properties do not abut on the portion of the street vacated, have no standing to question the purpose for which the city council granted the vacation.”].

A-81

*Ellingsen v. Franklin Cnty.*, 117 Wn.2d 24, 30, 810 P.2d 910 (1991) [“we conclude that its instrument of acquisition was within the recording statute, and had to be recorded with the county auditor to impart constructive notice”];

*Tomlinson v. Clarke*, 118 Wn.2d 498, 500, 825 P.2d 706 (1992) [“That doctrine provides that a good faith purchaser for value, who is without actual or constructive notice of another's interest in the property purchased, has the superior interest in the property. fn. #1: *Glasser v Holdorf*, 56 Wn.2d 204, 209, 352 P.2d 212 (1960).”]

A-82

*Hampton v. Gilleland*, 61 Wn.2d 537, 545, 379 P.2d 194 (1963) [“In *Martin v Shaen*, 61 Wn.2d 537, 379 P.2d 194 (1963), it is particularly pointed out that where a grantee is in possession of a properly executed deed, the presumption arises that it has been duly delivered, and anyone claiming that the deed in possession of a grantee was never delivered has the burden to proving the fact. . . . This presumption can be overcome only by clear and convincing evidence. *Raborn v Hayton*, 34 Wn. (2d) 105, 208 P. (2d) 133 (1963); *Jackson v Lamar*, 58 Wash. 383, 108 Pac. 946 (1963).”].

A-83

*Holmquist v King County*, 182 Wn. App. 200, 211-12, 328 P.3d 1000 (2014) [“Vacation of a street does not diminish the rights of private parties possessing an interest in the underlying land. *Rowe*, 71 Wash. at 271 (citing *Comm'rs of Coffey County v. Venard*, 10 Kan. 95, 100 (1872)). Thus, the street vacation did not—and could not—have the legal effect of altering the Puget Mill Company's underlying fee interest.”].

[Continued next page]

A-84

*Brown v Olmsted*, 49 Wn.2d 201, 213, 299 P.(2d) 564 (1956) [“The official order of vacation, being a public record, was in legal effect an amendment of the plat, and all who bought thereafter took with notice of the change. *Hagen v Bolcom Mills* (1913), 74 Wash. 462, 133 Pac. 1000, 134 Pac. 1051.”].

A-85

*Hagen v Bolcom Mills, Inc.*, 74 Wash. 462, 472, 133 P. 1000 (1913) [“Indeed, when once there has been a conveyance excluding a highway from the grant, as was done by Ebert in his deed to Case, neither Case nor any subsequent grantee can include it, for he would be conveying something as a part of the specific thing granted which was distinct from it. 4 Enc. of Law (2d ed.), 817.”].

## **APPENDIX B –RESERVED**

### **APPENDIX C-**

#### ***CITED QUOTATIONS IN THE COURT RECORD***

- C-1 CP 551 para. 13 [“The merit of this cause of action is related to the state and constitutional right of due process in regard to the taking of private property without compensation....”].
- C-2 CP 208 [“Plaintiff is not a lawyer, trained paralegal or similar professional. This Court however is not comparing him to such persons. Plaintiff is a pro se litigant who has chosen himself to file and proceed with this litigation. Plaintiff is not a criminal defendant. Plaintiff in this litigation is not involved with any issue or claim that entitles him to an attorney at public expense. His legal abilities as a pro se litigant are not markedly inferior or deficient as compared to other pro se litigants.”].
- C-3 VBR (6/15/2016) p 55, lines 16—18 [“THE COURT: . . . He continues to make these other arguments that really don’t respond to the city’s claim here and that’s indicative in response to the questions I asked.”];  
VRP (7/24/15) p 7 [“THE COURT: Okay, so Mr. Erickson your response and with your answer and so forth to this motion I’m not sure if you, I’m not sure if you understood what was really being asked for here so. . . .”].
- C-4 CP 1105 para. 8.32 [“Erickson requests monetary damages . . . for the wrongful placement of a utility pole and power lines over The Property as a taking of private property for public uses in violation of

the 5<sup>th</sup> and 14<sup>th</sup> Amendments and Washington Const. art. I § 3.”].

- C-5 CP 1114-15 para. 9.13 [“The Port’s fraud resulted in an unconstitutional taking of private lands without compensations in violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments. No street vacation of ‘K’ Street was represented to the 1997 tax court in a ‘foreclosure title search’ document for the tax deed to The Property. The City does not file with The County Auditor their street vacations for title companies to discover such errors. These errors resulted in Erickson’s tax sale acquisition in 1997 being wrongfully described by the metes and bounds of a railroad easement and not a legal description that included ‘K’ Street entitlements.”].
- C-6 CP 1117 para. 9.23 [“It is unconstitutional to strictly interpret RCW 35. 79.040 to modify street dedications against a dedicator’s wishes, RCW 64.04. 175. The City’s fraud resulted in an unconstitutional taking of private lands without compensations in violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendments etc. The City’s quit claiming their interests thereon to wrongful ownership was in disregard to the State Supreme Court that required ‘due diligence’ from cities to better assure reversions to proper ownerships.”].
- C-7 CP 1119 para. 9.30 [“The Port’s final short plat constitutes an unconstitutional taking of private property for public use without due process, or The City’s non enforcement of a breach of contract is an unlawful taking of The Property for public use by The City.”].
- C-8 CP 1122 para. 9.40 [“The City may be assuming total liability of a unconstitutional taking, or co-operating with The Port for a taking, of private property for public use without compensation in violation of the US 5<sup>th</sup> and 14<sup>th</sup> Amendments and our State Constitution. The detrimental harm to Erickson is elevated stress levels related to his mental challenges; his potential loss of The Property; the loss of The Property’s reversionary property rights to adjoining lands and streets; as well as the loss of lease revenues collected by The Port on The Property. Erickson has an assignment of damages for the value of The Property with its reversionary interests for not being able to gift/ sell the property to a non-profit organization due to this cloud of title and lack of County Assessor mapping The Property. Other damages will be determined at trial.”].
- C-9 CP 1132 item 5 [“Declaring The Port and/ or The City is responsible to compensate Erickson financial and other damages for their frauds and unlawful takings of private property for public use;”].

- C-10 CP 916 para. 1.7 [“1.7 . . . courts have a right to review city street vacation processes when due process is violated, *Fry v. O’Leary*, 141 Wash. 465, 469; 252 P. 111 (1927) [‘There can be no question but what, under our decisions, the power of vacation of streets and alleys or portions thereof belongs to the municipal authorities, and the exercise of that power is a political function which, in the absence of collusion, fraud, or the interference with a vested right, will not be reviewed by the court.’]; *Thayer v King County*, 46 Wn. App. 734, 738, 731 P. 2d 1167 (1987); *Capitol Hill Methodist Church v Seattle*, 52 Wn.2d 359, 368, 324 P.2d 1113 (1958) [“in the absence of collusion, fraud, or the interference with a vested right, will not be reviewed by the court.”].
- C-11 CP 1150 [“COMPLAINT for Declaratory Reliefs in regard to Railroad Property & Taking of Private Property for Public Use Damages”].
- C-12 CP 1161 Issue F [“Declaratory Relief—Concerning Common Law Fraud or Negligent Misrepresentation & Taking of Private Property for Public Use in Violation of 5<sup>th</sup> & 14<sup>th</sup> Amendments in Zenovic' s 2004 Short Plat Demands Compensation to Plaintiff”].
- C-13 CP 1167 para. 5.1 [“Plaintiff contends that IF this court affirms plaintiffs rights in The Property and finds that actions around the 2004 short plat or 1989 ‘K’ Street vacation constitute an unlawful taking of private property for public use in violation of the United States 5<sup>th</sup> and 14<sup>th</sup> Amendments as well as our Washington Const. art. I § 3; THEN plaintiff is due damages and compensations for such inverse condemnation equivalent to the highest market value . . .”].
- C-14 CP 394-56 [“These unconstitutional ‘takings without compensation’ and improper due process etc. are civil actions that requires professional expertise that stretches plaintiff’s economic, artistic, linguistic and theological training and abilities. Plaintiff’s disabilities make it very time consuming for him to apprehend and respond to legal issues. . . . ‘The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice,’ *Davis v Wechsler*, 263 U.S. 22, 24 (1923). . . . The taking of property by inverse condemnation may be filed in either a federal or state court. Superior Courts appointing an attorney to defend the poor and mentally challenged in unconstitutional civil actions against the state for the taking of private property for public use without compensation can avoid needless future court expenses. It could bring a better evaluation procedure for cities and counties to

stop their questionable behaviors against the poor and handicapped. . . . Although *Gideon v Wainwright*, 372 U.S. 335 (1963) deals with legal representation when criminally charged, the reasoning is worthy of consideration. *Gideon* reversed a prior legal axiom: ‘appointment of counsel is not a fundamental right, essential to a fair trial,’ *Betts v Brady*, 316 U.S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595 (1942). The *Gideon* court went on to affirm, ‘From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals, in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him....’ *Gideon* overturned *Betts*. In *Betts* the late Supreme Court Justice Black had affirmed in his dissenting opinion (not reversed) that, “This Court [U.S. Supreme Court] has just declared that due process of law is denied if a trial is conducted in such manner that it is ‘shocking to the universal sense of justice’ or ‘offensive to the common and fundamental ideas of fairness and right. ‘On another occasion, the U.S. Supreme Court recognized that whatever is ‘implicit in the concept of ordered liberty’ and ‘essential to the substance of a hearing’ is within the procedural protection afforded by the constitutional guaranty of due process.’ *Palko v. Connecticut*, 302 U.S. 319, 325, 327 (1937), overruled in part (double jeopardy) by *Benton v. Maryland*, 395 U.S. 784 (1969). My causes of action in this Complaint are not ‘criminal’ causes. . . . However, it seems that the reasoning in *Gideon* could be applied under The Due Process Clause of the 14th Amendment to this Complaint. . . .”].

- C-15 CP 971 [“I suggest that a motion from defense attorneys to remand this case to the federal court in Tacoma could be entertained by this court for that court’ s determination on the constitutional issue of the taking of private property without compensation. . . .”].
- C-16 CP 934 para. 3.35 [“if RCW 35. 79.030 is applied against a dedicator’ s wishes it would seem to be an unconstitutional ‘administrative taking’ of private property for public use without due process.”].
- C-17 CP 945-47 para. 4.13-20 [“**4. 13** This is a trespass of air space. The utility pole is on the edge of Marine Drive with utility lines invading the air space above plaintiff’s property. The Port’ s granting deed, PAC para. 3. 39, restricts the placement of walnut trees in proximity of the utility lines. **4. 14** The power of eminent domain is an inherent

power of the state. *Miller v. City of Tacoma*, 61 Wash.2d 374, 382, 378 P. 2d 464 (1963) fn #13 [‘This power is limited by both the [\*817 SIC] Washington State Constitution and by statute. Article I, section 16 (amendment 9) prohibits the State from taking private property for private use. RCW 8. 04.070 requires that a proposed condemnation be necessary for the public use. This court has developed a three-part test to evaluate eminent domain cases. For a proposed condemnation to be lawful, the State must prove that (1) the use is public; (2) the public interest requires it; and (3) the property appropriated is necessary for that purpose. *In re City of Seattle*, 96 Wash.2d 616, 625, 638 P. 2d 549 (1981) (citing *King County v. Theilman*, 59 Wash.2d 586, 593, 369 P. 2d 503 (1962)).’] **4. 15** 1) Plaintiff is doubtful that a utility purpose to serve a private corporation is a public use; 2) That the actual use of the utility pole was required for public use; and, 3) Plaintiff doubts that the placement of the pole was required to be precisely placed in that location across plaintiff’ s property as The City had extended land frontage along Marine Drive to place the utility poles that lead to the Nippon administrative center. It seems reasonable to not excuse this issue. **4. 16** Courts have held air space is a taking of property, ‘that there was an invasion of respondents’ property is thus not inconsistent with the local law governing a landowner’s claim to the immediate reaches of the superadjacent airspace.’ **4.17** *United States v. Cress*, 243 U.S. 316, 328, 37 S. Ct. 380, 385, 61 L. Ed. 746, establishes ‘it is the character of the invasion, not the amount of damage resulting from it, so long as the damage is substantial, that determines the question whether it is a taking.’ The U.S. Courts have also affirmed in *United States v. Powelson*, 319 U.S. 266, 279, 63 S. Ct. 1047, 1054, 87 L. Ed. 1390, that while the meaning of ‘property’ as used in the Fifth Amendment was a federal question, ‘it will normally obtain its content by reference to local law.’ **4.18** It seems a misrepresentation of plaintiff’s complaint and definitely a premature miscarriage of justice to say that the obvious trespass of utility lines over plaintiff’s property must simply be dismissed with prejudice by defendant’ s motion. Utility lines invading the air space immediately above plaintiff’ s property were installed in accord with The Port’ s quit claim deed, PAC para. 3. 39, TA#39. These power lines constitute an inverse condemnation of plaintiff’ s property. The U.S. 5<sup>th</sup> and 14th Amendments, as well as Article 1, section 16 of the Washington Constitution prohibits the taking of private property for public use without just compensation. An action for inverse condemnation seeks to recover compensation

from the government after it has appropriated property without a formal exercise of its eminent domain authority. *Martin v. Port of Seattle*, 64 Wn.2d 309, 310 n. 1, 391 P.2d 540 (1964), cert. denied, 379 U.S. 989 (1965). **4.19** A taking occurs when the government acts to interfere with the use and enjoyment of property, thereby affecting market value. *Martin*, 64 Wn.2d at 319- 20. A governmental taking is distinct from mere temporary interference with a private property right that is not continuous. A taking requires a permanent or recurring invasion of property. *Northern Pac. Ry. v. Sunnyside Hy. Irrig. Dist.*, 85 Wn.2d 920, 924, 540 P. 2d 1387 (1975). The placement of utility lines is a material damage plaintiff encountered as a result of The County Assessor not mapping plaintiff's property on the County Assessor' s map. The City relies on The County Assessor' s office mapping private property ownerships onto the County Assessor' s maps to be accurate, RCW 84.40. 160. **4.20** If The City wants this issue excused or resolved The City needs to negotiate a financial settlement with plaintiff for the remove the utility lines and/ or removal of the pole.”].

C-18 CP 952 para. 4.37-39 [“**4.37** There remains a claim of ‘fraud or mistake’ against The Port. The facts concerning this issue were cited in compliance to CR9(b) in the Complaint, PAC para 9. 32ff. **4. 38** The court rules are clear that the cause of fraud must be spelled out in the complaint. They were, PAC p 47 para. 9. 30 etc., ‘The Port’ s final short plat constitutes an unconstitutional taking of private property for public use without due process. . . .’ The litigation Guardian did not believe the facts rose to the level of fraud, and did not explain to plaintiff what actually would have . . . nor what was missing. Plaintiff claimed that ‘if the defendants are found not to have committed common law fraud by their misleading representations then defendant’ s acts and representations constitute a common law claim of negligent misrepresentation. . . .’ PAC p 47 para. 9.29. **4.39** Plaintiff is of the opinion that The Port’ s neglect to inform their title company of a tax deed to a parcel of land divided by the final short plat map instigated without due process a ‘taking without compensation’ of plaintiff’ s property but was also criminal PAMC 16. 04.220 states that ‘any person, firm, corporation . . . who violates any provision of this chapter relating to the sale, offer to see, lease or transfer of any lot, tract, or parcel of land in a short subdivision shall be guilty of a misdemeanor penalized by a fine of up to \$ 500. 00 or 90 days in jail.’”].

- C-19 CP 779 para. 3.27 [“Plaintiff was also under a restraint of a statute of limitations in his pursuit of truth concerning the matter of losing his property rights. He filed, on May 5, 2014, CR 6(a), when he needed to toll a potential taking of property by The Port’ s filing a final short plat map on May 4, 2004.”].
- C-20 CP 492 line 11f [“Plaintiff affirms that RCW 35. 79.030 requiring payment of full value of vacated street lands against dedicator’s wishes after 25 years of use is an ADMINISTRATIVE TAKING of property without due process or compensation against dedicator’s wishes, RCW 64. 04. 175 if applied to prior dedications.”].
- C-21 CP 493 [“**Law & Legal Theory:** DUE PROCESS VIOLATION, plaintiff not received due notice of street vacation against presumption that street lands are joined to adjacent property ownerships, RCW 35. 79. STREET VACATIONS must be done strictly according to statute.”].
- C-22 CP 226 para. 21 [“In September of 2014 Erickson requested that The City have The Port’ s short plat corrected, see Attachment Y. The City refused to respond, consequently this law suit and The City acquiring a new attorney to defend The City. Erickson does not believe there is any integrity or benefit for attorneys to threaten condemnation of land, and then not follow through. There may still be a future condemnation when The Port’ s utility easement is raised for appellate review as a taking of private property without compensation, especially when power lines traverse a property’ s air space perpendicular to the adjoining street. Taking of air space is a violation of due process, U.S. v. Causby, 328 U.S. 256, 264, 66 S. Ct. 1062 (1946) affirmed: ‘it is obvious that if the landowner is to have full enjoyment of the land, he must have exclusive control of the immediate reaches of the enveloping atmosphere. Otherwise buildings could not be erected, trees could not be planted, and even fences could not be run. The principle is recognized when the law gives a remedy in case overhanging structures are erected on adjoining land. 9 The landowner owns at least as much of the space above the ground as the can occupy or use in connection with the land. See Hinman v. Pacific Air Transport, 9 Cir., 84 F. 2d 755. The fact that he does not occupy it in a physical sense -by the erection of buildings and the like -is not material. Granting summary judgment to defendants may bring The Port’ s utility easement up for discretionary review before the appellate court as an intentional due process violation.’”].

- C-23 CP 181 para. 7.7 [“If The Port is not the fee owner of Marine Drive then a due process violation exists in regard to The City processing city Ordinance #3171 by not notifying plaintiff as owner of adjoining fee to 'Marine Drive, see property line extension maps, Afft Att. L, p 70. However; because The Port now claims no fee ownership in Marine Drive a NEW undisputed title action or property line designation exists as to plaintiff's property being vested in a portion of 'K' Street quit claimed to The Port. Plaintiff's vested right in Ord. #3171 street lands existed as a material disputable fact since The City' s 1989 quit claim deeds to Nippon and The Port created a cloud of title to plaintiff' s reversionary interests.”].
- C-24 CP 184, para. 7.21 & 7.23 (motion for reconsideration); [“RCW 58. 17. 110 . . . ‘Dedications shall be clearly shown on the final plat. No dedication, provision of public improvement . . . shall be allowed that constitutes an unconstitutional taking of private property.’ . . . Of course due process issues, taking property without compensation, were dismissed with prejudice . . . ”].
- C-25 CP 188 para. 7.43 [“London v. Seattle, 93 Wash.2d 657, 667, 611 P.2d 781 (1980), affirmed that ‘Before a taking has been completed, injunction is an appropriate remedy to enforce the prepayment requirements of our constitution. But once the taking is complete, payment of just compensation is the only sufficient and suitable remedy. Domrese v. Roslyn, 89 Wash. 106, 154 P. 140 (1916); Wandermere Corp. v: State, supra. See Comment, Balancing Private Loss Against Public Gain To Test for a Violation of Due Process or a Taking Without Just Compensation, 54 Wash. L. Rev. 315, 326 (1979).”].
- C-26 CP 879 line 7 [“Assuming that the pole does belong to the City—as plaintiff claims—the City has had a right to maintain that pole since, at least, June 2013. Trespass and takings fail.”].
- C-27 CP 434 para. 1.5 [“The issues Plaintiff wishes to be reviewed are . . . and ‘the state and constitutional right of due process in regard to the taking of private property without compensation.”].
- C-28 CP-434 para. 1.6 [“1.6 The issues identified by Plaintiff are not addressed in Plaintiff's Prayer for Relief in his Complaint (2nd Amended), and are being raised for the first time in Plaintiff' s motion. Even if the Court of Appeals were to accept review of this Court' s Order Dismissing Claims and Lifting Stay, it would not be able to review the issues as described in Plaintiff' s motion.”].

- C-29 CP 949 para. 4.27 [“4.27 . . . RCW 58. 17.090 Notice of Public Hearing, (1)(b). Special notice of the hearing shall be given to adjacent landowners by any other reasonable method local authorities deem necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within three hundred feet of any portion of the boundary of the proposed subdivision.”].
- C-30 CP 666. para. 12. [“The court [The Port v CMC] seemed to exclude The Port from acquiring any extinguished railroad rights in city streets, and did not transfer any PSM&T fee interests in The Property to The Port.”].
- C-31 CP 767 [“The request is for: 1. The Auditor's Recording copy of The City's 1989 city ordinance #2527 for street vacation of ‘K’ St. north of Marine Drive north to First Street and in the Sampson Donation Claim to Daishowa and The Port of Port Angeles. . . . After a diligent search, our office has determined that we do not possess any records responsive to this request.”].
- C-32 CP 639 para. 31 [“*Does plaintiff have a right to claim interest in adjoining ‘K’ Street lands?* Yes. The City failed to file a copy of Ordinance 2527 with County Auditor. This is a lack of proper public due notice.”]
- C-33 CP 890 para. 5 [“The City seems to have failed to record in the Auditor's office the street vacation in 1989, Ordinance #2527, for ‘K’ Street north of Marine Drive. Tomi Elliot, the Deputy Auditor, could not locate such, but it still might be findable somehow. The problem is the search in done in the Notation Box for the filed ordinances. Maybe The City has a copy of Ordinance #571 [SIC #2527] stamped by the County Auditor' s office.”].
- C-34 CP 636 lines 5-7 [“Quit Claim deeds only transfer fee interests owned, RCW 64.04.050. ‘After acquired interest’ was NOT included in the quit claim deeds to The Port and Nippon from The City.”].
- C-35 CP 893 para 1.4 [“Our American common law of vacating streets comes from old English common law prior to 1776. English common law of reversion of street lands is based on the English King granting Lords all authority on lands in land grants, and then later requiring roads to be built by the Lords on such lands, as The King had authority in regulate commerce and some Lords were not building roads through their lands. Open spaces and horseback riders did not need roads as wagons did.”].

- C-36 CP 326 [“We the undersigned, **owners of the land hereby platted**, hereby declare this plat and hereby **accept all responsibility for all claims and damages which may be occasioned to any other land or persons by actions of said platters** authorized by the city in relation to this subdivision. We hereby consent to this plat . . . filed for record this 4<sup>th</sup> day of May, 2004. . . .” (emphases added)].
- C-37 CP 327 [“INGRESS, EGRESS, AND UTILITY EASEMENT APPURTENANT TO PARCEL 2 PER THIS SHORT PLAT (0.53 ACRES)”] c.f. CP 692 [“Port of Port Angeles to retain ingress and egress rights”].
- C-38 CP 706-7 (2004) [“INGRESS AND EGRESS EASEMENT PER AUDITOR’S FILE NUMBER 2004-1131331”].
- C-39 CP 696 [“thence south 9\*17’28” East 24.89 feet”].
- C-40 CP 277 [“24.89”].
- C-41 CP 201 (notes) [“Beginning at the intersection of the northerly line of Marine Drive and the centerline of vacated ‘K’ Street . . . thence . . . thence . . . Thence northerly 31\*45’23” west along the north line of Marine Drive, Situated in Clallam County. . . .”].
- C-42 CP 325 [“**Legal Description** Port of Port Angeles Ownership[:]. . . EXCEPTING FROM SAID TRACTS ‘D’, ‘E’ AND ‘F’ OF THE JAMES SAMPSON CLAIM THE SOUTH 70 FEET THEREOF AS DEEDED TO THE CITY OF PORT ANGELES FOR MARINE DRIVE RIGHT OF WAY PER DEED RECORDED UNDER AF# 61835. . . . ALSO TOGETHER WITH ALL OF THAT PORTION OF THE EASERLY HALF OF ‘K’ STREET LYING SOUTHERLY OF THE CENTERLINE OF THE ALLEY OF BLOCKS 134 AND 136, TOWNSITE OF OF PORT ANGELES AND LYING NOTHERLY OF TRACT ‘F’ OF SAID JAMES SAMPSON DONATION LAND CLAIM AS VACATED BY THE CITY OF PORT ANGELES PER VACATION ORDINANCES #571 AND #2527. . . **Surveyor’s Report[:]** . . . **B.** SAID SURVEY SHOWS THE RIGHT OF WAY FOR ‘K’ STREET CROSSING THE SOUTH WEST CORNER OF TRACT ‘F’ OF THE JAMES SAMPSON DOATION LAND CLAIM. THIS CLAIM WAS ESTABLISHED PRIOR TO THE CREATION OF THE TOWNSITE OF PORT ANGELES. AS SHOWN ON THE ORIGINAL PLAT OF SAID TOWNSITE, THE RIGHT OF WAY FOR ‘K’ STREET DOES NOT CROSS THE CORNER OF THE DLC. THE PORT OF PORT ANGELES ACQUIRED TITLE TO TRACT ‘F’ OF THE PLAT OF

THE JAMES SAMPSON DL. AFTER EXETNSIVE TITLE RESEARH AND INQUIRIES TO THE CITY OF PORT ANGELS, THIS OFFICE HAS NOT BEEN ABLE TO FIND ANY DOCUMENT WHICH GRANTED RIGHT OF WAY TO THE CITY, FOR A 'K' STREET, ACROSS TRACT 'F'. HENCE THIS OFFICE HAS CONCLUDE THAT THE PORT STILL HAS FEE INTEREST IN ALL OF SAID TRACT 'F' EXCEPT THE SOUTH 70 FEET THEREOF WHICH WAS DEDED TO THE CITY OF PORT ANGLES FOR MARINE DRIVE PER AF# 61835."].

C-43 CP 923 para. 2 ["On September 9, 1913 The City passed Ordinance # 417 entitled, 'An Ordinance, providing for the opening and establishing of a street to be known. as Third Street North and for the dedication of said Third Street North and of the extension of Third Street through the James Sampson Donation Claim['] . . . Section 1. That a new street shall be established and opened, which shall be named and known as Third Street North, and shall comprise the strip of land seventy feet wide off of the southerly side of all that portion of the James Sampson Donation Claim, situated within the Port Angeles Townsite, in Clallam County, State of Washington, commencing at the easterly line of the tract marked 'D' of Said Donation Claim and running thence westerly through the tracts or subdivisions of Said Donation Claim marked 'D' 'E' 'F' to the westerly line of said Donation Claim and across 'K' Street, and to include all of said Tract 'F' which projects into the lines of 'K' Street projected, and that said new street shall be seventy feet wide' . . ."].

C-44 CP 397 para. 1 ["*Davis v Wechsler*, 263 U.S. 22, 24 (1923) affirmed that 'The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice,' *Davis v Wechsler*, 263 U.S. 22, 24 (1923). The taking of property by inverse condemnation may be filed in either a federal or state court . . . Superior Courts appointing an attorney to defend the poor and mentally challenged in unconstitutional civil actions against the state for the taking of private property for public use without compensation can avoid needless future court expenses."].

CP 905-06, CP 906 para. 6 ["The primary reason in plaintiff's mind is the governance's taking plaintiff's property without due process is not only unconstitutional but arguable 'criminal' . . ."].

C-45 CP 414 ["11. The State Access to Justice Board, 1325 Fourth Ave. Suite 600, Seattle, WA 98101, phone (206) 727- 8282, [www.wsba.org/atj](http://www.wsba.org/atj) has available published material for administrative

courts in regard to disability accommodation requests. See ‘Ensuring Equal Access for People with Disabilities—A Guide for Washington Administrative Proceedings.’ Although this is directed for informational purposes for administrative courts, it has many suggestions on the process. One thing they say is, ‘It is also important to remember that it is the impairment that is being accommodated, not the diagnosis.’ The information has a suggested questionnaire or assessment determination of the accommodation needed.”].

- C-46 *Opening Brief* p 45 [“issue #12: ‘Does a due process ‘taking without compensation’ entitle an indigent, pro se litigant with or without a Wechsler ‘delayed auditory recognition’ (short memory) score of 85 or less to court appointed legal representation?’ . . . One person must not suffer for society’s gain in wrongly prosecuted takings. When tax money funds city attorneys to defend municipal takings, society must equally fund attorneys to sue a municipality’s violation of the Takings Clause to provide ‘equality.’”].
- C-47 CP 019, or , or 565, or 796, or 888 (June 24, 2015 Kitsap order) [“The court orders that a litigation guardian shall be appointed to represent Mr. Erickson to handle this litigation on his behalf. . . .”].
- C-48 CP 795 [“A Litigation Guardian shall be appointed. Plaintiff is disabled by mental illness such that he lacks the capacity to sue.”].
- C-49 CP 989 (County Admin. Letter) [“Given the lack of any authority for the county to pay litigant’s civil litigation costs . . .”].
- C-50 VRP (4/22/2016) p 11 (Judicial comments) [“MR. ERICKSON: First of all, I appreciate the Court considering appointment of an attorney to assist or represent me. THE COURT: I read your correspondence attached to your response and everything and I’m not gonna do that, there’s no basis for it. I don’t believe you’re entitled to a court appointed attorney in connection with the accommodation rule and it’s a civil matter, it’s not a criminal matter and you know, so people that need lawyers in civil cases they either hire them or they go to a, you know, non-profit or something that provides legal services for indigent people or whatever the case may be, so you have those options, but the Court’s not obligated to and not going to appoint a civil attorney in this matter, so go ahead.”].
- C-51 CP 988 (July 29, 2015 Admin. Letter to Kitsap Judge) [“In sum, the attorney plans to review the file and perform sufficient research to be able to advise Mr. Erickson as to whether or not any of his claims have merit . . . The attorney did not feel comfortable specifically

determining what was in Mr. Erickson's best interests with respect to proceeding with his lawsuit. **Does the attorney's proposal appear to be in compliance with your expectation, based upon your June 24, 2015, order?**”].

- C-52 CP 986 (Aug. 25, 2016 Admin. Letter to LG); [“to be able to advise Mr. Erickson as to whether or not any of his claims have merit. . . . Your appointment is limited to serving as a ‘litigation guardian’ and does not include participating in any trial or conducting discovery . . . Litigation costs and/ or expert services may be requested through an ex parte motion and order.”].
- C-53 VRP (2/22/2016) p 8-9 [“I thought there was an inherit conflict of interest to both represent Mr. Erickson, as well as recommend to the Court what parts of this case don’t have merit. So, I’ve **narrowed it** and Judge Dalton very (inaudible) **narrowed my scope** [emphasis added] to making the recommendations that I did, but not representing Mr. Erickson, not representing the (inaudible). . . .”].
- C-54 CP 948 para. 4.24 [“In *Robinson v Seattle*, 119 Wn.2d 34, [32], P.2d 318 (1992) the court affirmed that it is was not appropriate for the court to dismiss any claim of ‘arbitrary and capricious’ action in violation of due process when there remains a disputed fact. *Robinson* said, ‘[32] . . . Because a finder of fact could determine the City acted arbitrarily and capriciously in repeatedly continuing enforcement of the HPO, rather than seeking to stay the force or effect of rulings of invalidity and injunctions against enforcement, genuine issues of material fact remain to be determined. CR 56(c). This determination is for the finder of fact after hearing testimony and receiving evidence. We hold the Robinsons properly stated a cause of action under 42 U.S. C. § 1983, having alleged their constitutional rights (to substantive due process) were violated by ‘persons’ (the City of Seattle and its officials) acting under color of law (the Housing Preservation Ordinance). Their claim is based in an impairment of constitutional property rights caused by the City of Seattle’s unreasonable, continued enforcement of a land use regulation previously invalidated by a trial court. As genuine issues of material fact remain to be decided, the trial court erred in dismissing the Robinsons’ civil rights action against the City on summary judgment. The liability of the City to the Robinsons under section 1983, and to what degree possible civil rights damages are available, are matters to be determined in trial court.’”].

- C-55 CP 1045 para. 2.1 [“On Sept. 20, 2012 plaintiff’s predecessor filed a Torrens Registry of Lands, Superior Court File # 12- 200884- 4, in regard to the property at issue in this cause of action. Such application was followed with amendments to that Torrens Application in compliance with RCW 65.12.030: Feb. 8, 2013, Oct 8, 2013, Jan 6, 2014, and April 30, 2015.”].
- C-56 CP 1069 para. 3.2 [“Clallam County Superior Court failed to process Olympic Ministries’ Torrens Application, RCW 65.12.090, to identify the title and liens on The Property, RCW 65.12.040 and advise the Justice as to validity of the Torrens Applicant’s land claims, RCW 65.12.110.”].
- C-57 1975 CP 947 para. 4.19 [“4. 19 A taking occurs when the government acts to interfere with the use and enjoyment of property, thereby affecting market value. *Martin*, 64 Wn.2d at 319- 20. A governmental taking is distinct from mere temporary interference with a private property right that is not continuous. A taking requires a permanent or recurring invasion of property. *Northern Pac. Ry. v. Sunnyside Hy. Irrig. Dist.*, 85 Wn.2d 920, 924, 540 P. 2d 1387 (1975).”].
- C-58 CP 950 para. 4.30 [“4. 30 An arbitrary and capricious action requires that a reasonable person can read the law and say that the officials violated ‘clearly established rights’ of which a reasonable person would have known, *Harlow v. Fitzgerald*, 457 U.S. 800, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982).”].
- C-59 CP 397 (Original GR 33 request) [“In my situation this likely is not an additional expense for the County as The County did not process a prior Torrens Registration application for the property, Sup. Ct. file # 12 2 00884 4, The Torrens Act, RCW 65.12.110. Here an attorney would have written his full assessment of plaintiff’s title and liens on the property for the Superior Court justice and applicant to review prior to a court determination of ownership claims in a law suit. Such an evaluation was sought but not afforded plaintiff by the old Superior Court Justices of Clallam County not facilitating the Torrens application process. The Clallam County Commissioners had seemingly accepted a Torrens Registration process by approving the court filing fees for such, but that likely is the limit of their administrative authority in the matter. . . .”].
- C-60 RCW 65.12.090 [“The judges . . . shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. . . .”]

- C-61 CP 301 (Department Comments) [**The Public Works and Utilities Department** noted that the area is served by sanitary sewer and water. Easements must be shown on the final plat identifying existing service lines.]. CP 299 (Utility. . .) [**Policy C.2: All new utility services should be underground.**].
- C-62 AF # 187324 (not part of court record) [“. . . All of Tract D except Third Street North and Tax #616; All of Tract E except Third Street North; All of Tract F except Third Street North and one hundred forty square feet; Vacated part of Railroad Avenue between east line of Lot D of Sampson Donation Claim and east line of K Street; all being in Sampson Tracts.”].
- C-63 CP 505 [**EXCEPTING FROM SAID TRACTS ‘D’, ‘E’ AND ‘F’ OF THE JAMES SAMPSON CLAIM THE SOUTH 70 FEET THEREOF AS DEEDED TO THE CITY OF PORT ANGELES FOR MARINE DRIVE RIGHT OF WAY PER DEED RECORDED UNDER AF# 61835;**].
- C-64 CP 224 para. 14-15 [**14.** The Port's final plat is distinguished from surveys by The Port's Certified Declaration, ‘We the undersigned, owners of the land hereby platted, hereby declare this plat and hereby accept all responsibility for all claims and damages which may be occasioned to any other land or persons by actions of said platters authorized by the city in relation to this subdivision. We hereby consent to this plat’, see Attachment R p85e. **15.** This final plat map declaration is not found on a regular survey, see Nippon's Boundary Survey, . . ., NTI's survey. . .”].
- C-65 *Response* p 33 [“First, Mr. Erickson’s claim as set forth . . . is utterly incomprehensible . . . Mr. Erickson’s statement of this claim is indecipherable. . .”].
- C-66 CP 434 para. 1.5.[“The issues include ‘private taking of public property without due process’ (emphasis added); attorney fees for ‘a taking of personal property (money) in violation of a June 24, 2014 court order’; ‘not having a litigation guardian represent those issues instead of plaintiff’ in apparent ‘violation of the American Disability Act [sic] of 1990’. . .”].
- C-67 VRP (6/15/2016) p 55 [“The city’s motion is fairly clear and it sites applicable law and Mr. Erickson, the plaintiff, really doesn’t respond to that. He continues to make these other arguments that really don’t respond to the city’s claim here and that’s indicative in response to the questions I asked.”].

- C-68 CP 208 [“This Court has observed Plaintiff in court and has read his various pleadings. Although his pleadings can be rambling, repetitive and longer than necessary or desired, he has been able to present his claims and arguments to the court in writing and orally. He has presented himself appropriately in his court appearances. In comparison to other pro se litigants in this court’s experience, Plaintiff’s presentations to the court do not appear to be markedly inferior. He has demonstrated an understanding of court rules and procedures; an ability to pursue his claims and respond to other parties and counsel; to file pleadings; and to argue the merits of his case. His sealed records indicate he is intelligent and above- average in that regard. No, Plaintiff is not a lawyer, trained paralegal or similar professional. This Court however is not comparing him to such persons. Plaintiff is a pro se litigant who has chosen himself to file and proceed with this litigation.”].
- C-69 VRP (7/24/2015) p 9 [“Judge Dalton's order basically said that he's at capacity when he sued right now.”]
- C-70 *Opening Brief* p 45 [“One person must not suffer for society’s gain in wrongly prosecuted takings. When tax money funds city attorneys to defend municipal takings, society must equally fund attorneys to sue a municipality’s violation of the Takings Clause to provide “equality.”].
- C-71 *Respondent’s City of Port Angeles’s Brief*, p 25 [“What is more, Mr. Erickson presented materials in response to the motion, thereby converting it into one under CR 56. See Cr 12(b)(7)”].
- C-72 CP 292 [“EXCEPTING THEREFROM tract described in deed recorded December 10, 1997 under Auditor's File No. 19971001505000.”].
- C-73 CP 027-28 [“all the claims against the remaining defendants are DISMISSED WITH PREJUDICE except for the property line and/ or quiet title actions specifically referenced in the Defendant’s motion (dated 3/ 25/2016).”].
- C-74 CP 984, [“There seem to be no disputed facts in the **no disputed facts** case and the determination could be made on a summary judgment motion if made by any of the remaining parties.”].
- C-75 CP 1025 para. 8.64 (*The County’s Answer*). [“the County admits that the Assessor’s office has not mapped the Plaintiff’s property because it does not possess the requisite information to ensure an accurate map.”]

- C-76 CP 721—27 (last paragraph) [“Excepting from the above described lands rights of way and easements heretofore granted by the Grantor for roads, railroads, and other purposes, as shown by the records in the office of the Auditor of Clallam County, Washington.”].
- C-77 CP 901 para. 2—6 (Mr. Wengler’s comments) [“2. Mr. Wengler is a licensed surveyor for the Washington State as well as for the federal government. He was recently appointed by the state Governor to be the final judge on disciplinary matters concerning discrepancies in surveyor’s surveys or conduct . . . 4. Mr. Wengler was wondering what standards the Assessor’s office uses to establish ‘requisite information to ensure an accurate map.’ 5. Mr. Wengler said that if a description is nebulous or vaguely written it cannot be a valid survey if it cannot be located on land. Legal descriptions prove themselves viable and mappable when they have clear metes or points on land, and a clear intention for the description. The actual distances are subject to correction to the metes and intentions. 6. Mr. Wengler said the language of the legal description appeared not written by a surveyor but was precise and clear enough to be surveyed. It was an adequate legal description or he would not have noted it on the 2007 survey.”].
- C-78 CP 397 (original GR 33 application) [“In my situation this likely is not an additional expense for the County as The County did not process a prior Torrens Registration application for the property, Sup. Ct. file # 12 2 00884 4, The Torrens Act, RCW 65.12.110. Here an attorney would have written his full assessment of plaintiff’s title and liens on the property for the Superior Court justice and applicant to review prior to a court determination of ownership claims in a law suit. Such an evaluation was sought but not afforded plaintiff by the old Superior Court Justices of Clallam County not facilitating the Torrens application process. The Clallam County Commissioners had seemingly accepted a Torrens Registration process by approving the court filing fees for such, but that likely is the limit of their administrative authority in the matter. . . .”]
- C-79 CP 325 [“Surveyor’s Report[:] This survey encompasses land vested in the Port of Port Angeles and described within the subdivision certificate issued by Olympic Peninsula Title Company order #03076079 dated February 25, 2004. Said land was initially acquired by the Port under deeds recorded under AF #215280 on 2/21/1945 and AF# 216008 on 4/10/1945. . . .”].

- C-80 CP 771 [“ISSUES FOR THE PORT of PORT ANGELES: 1. Lien for Public Utility and Transportation Corridor (PU& TC) acquisition on The Property 2. Wrongful Utility Use as a PU&TC on The Property 3. Land / Value Property extension rights: Property Line/ Reversion/ Lack of due notice (not named as vacated) Quiet Title Ordinance #417 entitled, ‘An Ordinance, providing for the opening and establishing of a street to be known as Third Street North and for the dedication of said Third Street North and of the extension of Third Street through the James Sampson Donation Claim.’ Property Line/ Reversion Lack of due notice (filing with county auditor) Quiet Title Ordinance #2527 (April 4, 989) entitled, ‘AN ORDINANCE of the City of Port Angeles vacating a portion of X Street north of Marine Drive and south of Front Street.’”].
- C-81 CP 234 para. 56. [“56. The Port qualifies to own a lien on Erickson' s property as a Public Utility and Transportation Corridor which they say they may refute or not want, see Attachment Z p115, RCW 64.04.180-190.”].
- C-82 CP 1119 para. 9.29 [“Facts previously cited in paragraphs 3.2 through 3.63 and especially paragraphs 3.37, 3.40, 3.41, 3.42, 3.43, 3.44, 3.45, 3.46, 3.47, etc. indicate that The Port committed fraud As evidenced by clear, cogent and convincing evidence. The City, OPT and Zenovic each separately, mistakenly or intentionally, individually or collectively contributed to The Port' s fraud in The City' s acceptance of The Port' s 2003 short plat application. And, if the defendants are found not to have committed common law fraud by their misleading representations then defendant's acts and representations constitute a common law claim for negligent misrepresentation or a civil conspiracy to commit fraud.”].
- C-83 CP 224 para. 14 [“We the undersigned, **owners of the land hereby platted**, hereby declare this plat and hereby **accept all responsibility for all claims and damages which may be occasioned to any other land or persons by actions of said platters** authorized by the city in relation to this subdivision. We hereby consent to this plat . . . This is to certify that on the \_\_\_\_ day of \_\_\_\_ 2003 . . .” (emphases added)].
- C-84 CP 302 [“Conclusions . . . **2.** The final plat shall identify easements for utilities that exist . . . Findings . . . **7.** Portions of ‘K’ Street adjacent to the site were vacated in 1989. Therefore, that portion of ‘K’ Street north of Marine Drive is incorporated as a portion of proposed Parcel 2 of the proposed plat. . . . **13.** . . . A title report and information required by Section 16. 04.160 PAMC shall be submitted

with the final plat. . . .”];

CP 298 para. 2 [“The entire property is under Port of Port Angeles ownership. . . .”].

C-85 CP 172 [“As you know, following a public hearing conducted on October 8, 2003, the Planning Commission approved the Port’s preliminary binding site improvement plan (BSIP) for property located on Marine Drive with the following conditions: 1. Legal descriptions for the four lease lots shall be provided on the final Mylar. . . .”].

C-86 CP 138 [“Note: Includes half of vacated ‘K’ Street along north western edge.”].

C-87 CP 143 [“Thence northerly 31\*45’23"west along the north line of Marine Drive, a distance of 146. 39 feet to the point of intersection of the Northerly line of Marine with the southerly prolongation of the East line of ‘K’ Street in the townsite of Port Angeles, thence North 33\*15’19" East along the southerly prolongation and along the Easterly line of ‘K’ Street a distance of 752.45.f feet. . . .”].

C-88 CP 1133 [“16. Awarding Erickson other damages to be determined at trial.”].

C-89 CP 296 [“the easement is more specifically described as follows: Parcel #0630001900700000 Sampson Tracts Vol. 170, Page 294.The North westerly ten (10) feet of the south westerly 250 feet of the above described parcel with the constructed overhead power line and associated equipment being the center of the easement.”].

C-90 CP 365 [“Parcel Number 06 30 00 190075 0000”].

C-91 CP 326-27 [“City or Port Angeles easement centered on existing overhead power lines see AF#2003 1110859”].

C-92 CP 173 [“Chair Nutter closed the public hearing . . . The property is under a single ownership and the Port will have some oversight in the matter.”].

C-93 CP 226 para. 21 [“Taking of air space is a violation of due process, *U.S. v. Causby*, 328 U.S. 256, 264, 66 S. Ct. 1062 (1946) affirmed: it is obvious that if the landowner is to have full enjoyment of the land, he must have exclusive control of the immediate reaches of the enveloping atmosphere. Otherwise buildings could not be erected, trees could not be planted, and even fences could not be run. The principle is recognized when the law gives a remedy in case overhanging structures are erected on adjoining land. 9 The

landowner owns at least as much of the space above the ground as the can occupy or use in connection with the land. See *Hinman v. Pacific Air Transport*, 9 Cir., 84 F. 2d 755. The fact that he does not occupy it in a physical sense -by the erection of buildings and the like -is not material.”].

- C-94 CP 396 [“My civil action against these public agencies is in the public's interest. Assistance by the courts to stop harmful processes of government agencies to confiscate lands is in the interests of a-lot-of property owners [pun]. A fair and just hearing of my challenges are also in the interest of the public. Public interest is a necessary quality of judicial declaratory relief that justifies the court's time and expense in that regard. In this Complaint, declaratory reliefs are sought along with trespass, fraud, inverse condemnation, quiet title actions, etc. Historically, declaratory relief was adopted by Congress in 1919 when it said, ‘The district courts, the circuit courts of appeals, and the Supreme Court of the United States shall have power in any action or in an independent or interlocutory proceeding, to declare rights and other legal relations on written request for such declaration, whether or not further relief is or could be claimed; and such declaration shall have the force of a final judgment.’ Declaratory Relief seems distinct from finalizing a contractual dispute or being simply advisory. Declaratory Relief seems to have been created with one purpose to avert additional court time and expenses in litigations.”].
- C-95 CP 028 [“all the claims against the remaining defendants are DISMISSED WITH PREJUDICE except for the property line and/or quiet title actions specifically referenced in the Defendant' s motion (dated 3/25/2016).”]. The motion to dismiss dismissed all unidentified claims, CP 975—78 [“To the extent there are other claims beyond those expressly identified above, the Court should dismiss the same with prejudice.”].
- C-96 CP 493 [“Law & Legal Theory: DUE PROCESS VIOLATION, plaintiff not received due notice of street vacation against presumption that street lands are joined to adjacent property ownerships, RCW 35. 79.”].
- C-97 CP 229-30 [“**36.** *National Bank of Tacoma v Johnson*, 137 Wash. 452, 453, 241 P. 458 (1926) affirmed a prior court' s holding that conveyance of property on platted streets grants fee to the center of the street when it said: And, when the predecessor in interest of the respondent received title to block 38 while F Street remained a public street, it acquired title thereto; and, when the street was subsequently

vacated, it got the full fee title to the vacated street, free from the easement theretofore existing. . . .’ 37. *Roeder Co. v. Burlington No. Inc.*, 105 Wn.2d 567, 575; 71.6 P. 2d 855 (1986); said, Similarly, at common law, the conveyance of land bounded by or along a highway carries title to the center of the highway unless there is something in the deed or surrounding circumstances showing an intent to the contrary. 38. *Bradley v. Spokane & LE.R.R.*, 79 Wash. 455, 458, 140 P. 688 (1914) cited the simple version of the street reversion rule for Washington State, the public has only an easement of use in a public street or highway, and that the fee rests in the owners of the abutting property. *Holm v. Montgomery*, 62 Wash. 398, 113 Pac. 1115, 34 L. R. A. (N. S.) 506. 39. *Rowe v. James*, 71 Wash. 267, 271, 128 P. 539 (1912) stated that, ‘We think the correct view is that, when an owner plats land bounded by a street included in his plat, and owns nothing beyond the street, and conveys all his land abutting upon the street without reservation, the purchaser acquires the fee to the entire street’ (case citations omitted.) 40. The Port and Nippon are not correct to affirm by their pleadings that Erickson has no rights in adjoining streets by referring to them as LOTS. The fee was never created separate from adjoining lands to create a separate lot. Defendants are again trying to take Erickson’s property rights away from him without due process of compensation by diminishing Erickson’s property rights to any future reversion of Marine Drive.”].

C-98 CP 376 [“6.7 . . . In the present case, neither the Port nor Nippon has claimed an interest in the Property. Therefore, there is no live controversy between Plaintiff and Defendants regarding his interest in the Property, and Plaintiff’s action to quiet title to the Property as against the Port, and, as applicable, Nippon, should be dismissed with prejudice . . . 6.8 If Plaintiff’s claim as set forth . . . is not as Defendants understand it to be, then Plaintiff has failed to provide a sufficiently definite statement of his claim, as ordered by the Court. . . .”].

C-99 VRP (6/23/16) p 27-8 [“There’s no colorable claim in Mr. Erickson’s pleadings that Nippon has made any claim at all against title to his property.”].

C-100 VRP (9/23/26) p 30 [“THE COURT: . . . What, if anything, has occurred after 1997 that affects Mr. Erickson’s property or the claims that he’s making? For example, these reversionary rights are over hundred years old. The street vacation of K Street was back in the ‘80’s and I don’t know, maybe the survey and the utility use

agreement but what, if anything else, has occurred to this property since he acquired in '97, as far as you're concerned? MR. BARNHART: I'm not aware of anything that's happened and Mr. Erickson hasn't argued anything beyond what we briefed with respect to the surveys at issue. Those, of course, don't give rise to a claim against title so my answer to Your Honor's question is nothing has happened since Mr. Erickson acquired title that would suggest any adverse claim by either Nippon or the Port to his interest in this property.”].

- C-101 CP 325 [“On May 4, 2004 Zenovic & Associates recorded final Short Plat SHP 03-02, AF#2004- 1132724. The survey records: ‘Surveyor’ s Report . . . B. Said surveys show the right of way for ‘K’ Street crossing the south west corner of tract ‘F’ of The James Sampson Donation Land Claim. This claim was established prior to the creation of the townsite of Port Angeles. As shown on the original plat of said townsite, the right of way for ‘K’ Street does not cross the corner of the DLC [SDC]. The Port of Port Angeles acquired title to Tract ‘F’ of the plat of the James Sampson DLC [SDC]. After extensive title research and inquiries to the city of Port Angeles, this office has not been able to find any document which granted right of way to the city for ‘K’ Street across tract ‘F.’ Hence this office has concluded that The Port still has fee interest in all of said tract ‘F’ except the south 70 feet thereof which was deeded to the city of Port Angeles for Marine Drive per AF#61835.”].
- C-102 CP 377 para. 6.13 [“Plaintiff concedes as much in his More Definite Statement at 5: 22: ‘Nippon and the Port acquired rights in ‘K’ Street by quit claim deed.”].
- C-103 CP 302 [“2. The final plat shall identify easements for utilities that exist . . . 7. Portions of ‘K’ Street adjacent to the site were vacated in 1989. Therefore, that portion of ‘K’ Street north of Marine Drive is incorporated as a portion of proposed Parcel 2 of the proposed plat.”].
- C-104 CP 940 para. 9.8 [“ . . . Deeds may expressly exclude the streets, but unless they do, the implication is that the street is included. Cox v. Freedley, 33 Pa. St. 124, 75 Am. Dec. 584 [(1859)].”].
- C-105 CP 357 [“ONE PROBLEM: The City approved a short plat application that did not conform to the city’ s preliminary survey that showed a portion of my property’ s metes and bounds, City ordinance PAMC 16. 04. 180(A)(1), see enclosed survey maps. The city[’s] required a title report, see Oct. 3, 2003 letter. The title report did contain State DOT documents that referenced my property by

following a chain of auditor file numbers. The title report denied recognizing our tax sale documents and quit claim deed as valid title, see enclosed. That title insurance certificate is valued as 75.00 dollars of protection. Lawfully, only The City can nullify the voidable, improperly approved short plat. Many resulting signed agreements have followed the short plat. This mistake must be remedied by The City or such is an attempt by The Port and The City to an unlawful taking of private property for public use. . . .”].

C-106 VRP (4/22/2016) p 11 [“. . . but the Court’s not obligated to and not going to appoint a civil attorney in this matter, so go ahead.”].

C-107 CP 188 para. 7.43 [*“London v. Seattle*, 93 Wash.2d 657, 667, 611 P.2d 781 (1980), affirmed that "Before a taking has been completed, injunction is an appropriate remedy to enforce the prepayment requirements of our constitution. But once the taking is complete, payment of just compensation is the only sufficient and suitable remedy. *Domrese v. Roslyn*, 89 Wash. 106, 154 P. 140 (1916); *Windermere Corp. v: State*, *supra*. See *Comment, Balancing Private Loss Against Public Gain To Test for a Violation of Due Process or a Taking Without Just Compensation*, 54 Wash. L. Rev. 315, 326 (1979).”].zzz

C-108 CP 228 para. 30 [“Nippon must prove their color of title (quit claim deed) on undeveloped land is stronger than Erickson' s title rights to fee title in streets. . . .”].

C-109 CP 256 [“All of Tract ‘F’ of the James Sampson’s Donation Claim, excepting therefrom One Hundred forty square feet (140) in the Southwest corner of this tract ‘F’ used for railroad right of way purposes. Also excepting therefrom right of way for Third (3) Street, conveyed to the City of Port Angeles.”].

C-110 VRP (9/23/2016) p 43 [“The Port has no interest in Marine Drive. That’s affirmed in the OPT title report of 2004 or here is the 1925 deed, . . . ends with – [‘]excepting from the above-described lands, rights of way and easements here before granted by the grantor, Puget Sound Mill & Timber, for roads and railroads and other purposes as shown by the records in the office of the auditor of Clallam County Washington.[’] So they had no reversion rights”].

C-111 CP 227 para. 29 [“The quit claim deeds are clouds of title to Erickson' s right to reversion interests in ‘K’ Street. Erickson has stronger title as an adjoining property owner to the street than defendants, RCW 7. 28.080— Color of title. . . .”].

- C-112 CP 1092 para. 5.2 [“5. 2 The Property is unoccupied and vested to Erickson, RCW 84.64.180.”].
- C-113 CP 488-89 [“Manifest Objective was to create a road around the mill to Railroad Avenue. Supportive facts are: Deed for dedication and Ordinance #417 creating Third Street North were the same week. See also Photos of wharf and ships etc., Afft. MDS, Attachment G; see Photo of pre-existing road to Ediz Hook, Afft. MDS, Attachment H; Ord. #406 (Feb. 4, 1913) vacated streets between mill and the bay; Ord. #417 (Sept. 9, 1913) named Third St. No.; Ord. # 422 improved Third St. No.; and RR franchise ordinances. Note: Ord. # 464 (Aug. 11, 1914) said 'K' Street north of Marine Drive was grubbed out and developed, however the city maps indicate such was never done, see later Ord. # 569; see Afft MDS, Attachment I & J; and Ord. # 3171 and internal reports for that portion of vacation of 'K' street not included here. Also note AF#76205 (March 10, 1918), a deed to connect Marine Dr. to new road, Ord. # 588 (Oct. 12, 1917) which were done at a later time indicating that this development was not part of original manifest objective of 1913 deed. Later road through Nippon land was city' s solution to a portion of Railroad Avenue near 'K' Street close to the bay that was being flooded and . . . .”].

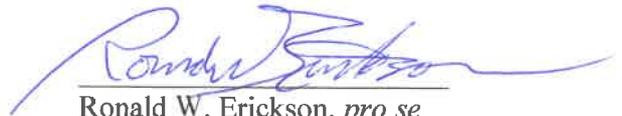
## CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct: that on November 28<sup>th</sup>, 2017 I caused to be served the foregoing document entitled "REPLY To Nippon Paper Industries, USA And Port of Port Angeles' RESPONSE TO APPELLANT'S OPENING BRIEF" via the Appellate Court electronic portal, COA2 File Upload Manager, to the following recipients' email addresses:

- Simon Barnhart, Platt Irwin Law Firm, 403 S. Peabody, St. Port Angeles, WA 98362, Attorney for the Port of Port Angeles, [sbarnhart@plattirwin.com](mailto:sbarnhart@plattirwin.com) ;
- Adam Rosenberg & Katherine A. Christofilis, Williams Kastner & Gibbs, PLLC, 601 Union Street, Suite 4100, Seattle, WA 98101, Counsel for the City of Port Angeles, [arosenberg@williamskastner.com](mailto:arosenberg@williamskastner.com) , [kchristofilis@williamskastner.com](mailto:kchristofilis@williamskastner.com) ;
- Janis G. White, Fidelity National Law Group, 701 Fifth Avenue, Suite 2710, Seattle, WA 98101, Counsel for Nippon Paper Ind., U.S.A., [janis.white@fnf.com](mailto:janis.white@fnf.com) ; and
- Brian Wendt, Clallam County Prosecuting Attorney's Office, 223 E. 4<sup>th</sup> Street, Suite 11, Port Angeles, WA 98362, Attorney for Clallam County, [bwendt@co.clallam.wa.us](mailto:bwendt@co.clallam.wa.us) .

**DATED & SIGNED** this 28<sup>th</sup> day of November, 2017, in the City of Port Angeles, Clallam County, Washington.

Respectfully Submitted,



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# RONALD ERICKSON - FILING PRO SE

November 28, 2017 - 1:40 PM

## Transmittal Information

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**Appellate Court Case Number:** 49951-7  
**Appellate Court Case Title:** Ronald W. Erickson, Appellant v. The Port of Port Angeles, et al, Respondents  
**Superior Court Case Number:** 14-2-00407-1

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### Comments:

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