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

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SKIPPER WILLIAM KUZIOR,

*Appellant,*

v.

TACOMA SCHOOL DISTRICT and  
LINCOLN TREE FARM

*Respondents.*

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**BRIEF OF RESPONDENTS**

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## TABLE OF CONTENTS

|             |   |           |
|-------------|---|-----------|
| <b>I.</b>   | <b>INTRODUCTION .....</b>   | <b>1</b>  |
| <b>II.</b>  | <b>ASSIGNMENTS OF ERROR .....</b>   | <b>3</b>  |
|             | A. Issues Pertaining To Assignments Of Error.....   | 3         |
| <b>III.</b> | <b>STATEMENT OF THE CASE.....</b>   | <b>4</b>  |
|             | A. Introduction To The Parties And The Properties At Issue.   | 4         |
|             | B. Kuzior’s Allegations Regarding The Boundary Line.....  | 6         |
|             | C. Kuzior’s Allegations Regarding An Easement Are Without Factual Support. ....   | 9         |
| <b>IV.</b>  | <b>SUMMARY OF ARGUMENT .....</b>  | <b>11</b> |
| <b>V.</b>   | <b>ARGUMENT .....</b>   | <b>13</b> |
|             | A. Standard Of Review. ....   | 14        |
|             | B. The Trial Court Properly Granted Summary Judgment Because No Genuine Dispute Of Material Fact Existed As To The Location Of Lincoln Tree Farm’s Boundary And The Non-Existence Of Any Alleged Easements Benefitting Kuzior. .... | 16        |
|             | 1. The District proved ownership of all disputed portions of Lincoln Tree Farm.....   | 17        |
|             | 2. The District proved Kuzior owns no easement over any portion of Lincoln Tree Farm. Kuzior provided no evidence to create a genuine dispute of material fact that would preclude summary judgment. ....                           | 21        |
|             | 3. Kuzior offers no evidence to support his claims, let alone sufficient to create a genuine dispute of material fact at the trial court. ....  | 24        |

|   |           |
|---|-----------|
| C. Kuzior's Argument For A Prescriptive Easement Is Improperly Raised On Appeal And Is Legally And Factually Meritless. ....  | 26        |
| 1. Kuzior's argument for a prescriptive easement is improperly raised on appeal.....  | 26        |
| 2. The evidence does not support Kuzior's claim of a prescriptive easement. ....  | 27        |
| D. Kuzior's Unconstitutional Government "Taking" Argument Is Also Improperly Raised For The First Time On Appeal; However, Such An Argument Is Also Meritless And Without Evidentiary Support. .... | 30        |
| E. Issues That Kuzior Did Not Address In His Opening Brief Have Been Waived.....  | 31        |
| F. This Court Should Award The District Its Attorneys' Fees Incurred In Defending Against Kuzior's Frivolous Appeal. ....   | 32        |
| <b>VI. CONCLUSION.....</b>  | <b>33</b> |
| <b>VII. APPENDIX .....</b>  | <b>34</b> |
| 1. Survey of Kuzior Property .....  | A-1       |
| 2. Wilsey & Ham, Inc. Survey of Lincoln Tree Farm...  | A-2       |
| 3. Group Four, Inc. / Roupe Survey Sketch A-3.....  | A-3       |

## TABLE OF AUTHORITIES

### CASES

|  |       |
|--|-------|
| <u>Byrd v. Pierce County</u> ,<br>5 Wn. App. 2d 249, 425 P.3d 948 (2018)-----  | 17    |
| <u>Cowiche Canyon Conservancy v. Bosley</u> ,<br>118 Wn.2d 801, 828 P.2d 549 (1992)-----                                       | 32    |
| <u>Gamboa v. Clark</u> ,<br>180 Wn. App. 256, 321 P.3d 1236 (2014)-----  | 28    |
| <u>Granite Beach Holdings, LLC v. State ex rel. Dept. of Natural<br/>Resources</u> , 103 Wn. App. 186, 11 P.3d 847 (2000)----- | 29    |
| <u>Greater Harbor 2000 v. City of Seattle</u> ,<br>132 Wn.2d 267, 937 P.2d 1082 (1997)-----                                    | 15    |
| <u>Kunkel v. Fisher</u> ,<br>106 Wn. App. 599, 23 P.3d 1128 (2001)-----  | 29    |
| <u>LeBleu v. Aalgaard</u> ,<br>193 Wn. App. 66, 371 P.3d 76 (2016)-----  | 28    |
| <u>McKee v. Am. Home Products, Corp.</u> ,<br>113 Wn.2d 701, 782 P.2d 1045 (1980)-----   | 3, 14 |
| <u>Robertson v. Perez</u> ,<br>156 Wn.2d 33, 123 P.3d 844 (2005)-----  | 26    |
| <u>State v. WWJ Corp.</u> ,<br>138 Wn.2d 595, 980 P.2d 1257 (1999)-----  | 30    |
| <u>Streater v. White</u> ,<br>26 Wn. App. 430, 613 P.2d 187 (1980)-----  | 32    |

**STATUTES**

|                   |       |
|-------------------|-------|
| Chapter 18.43 RCW | 18    |
| RCW 4.16.020      | 28    |
| RCW 4.96.010      | 13    |
| RCW 7.28.010      | 3, 17 |
| RCW 7.28.120      | 17    |

**RULES**

|                |        |
|----------------|--------|
| CR 36          | 5      |
| CR 56(c)       | 15     |
| RAP 2.5(a)     | 26, 27 |
| RAP 10.3(a)(4) | 3, 32  |
| RAP 10.3(a)(5) | 3, 14  |

## I. INTRODUCTION

The trial court properly granted defendant Tacoma Public Schools'<sup>1</sup> (the "District") motion for summary judgment dismissing plaintiff Skipper Kuzior's ("Kuzior") claims against it and quieting title to the real property commonly known as Lincoln Tree Farm which is owned by the District.<sup>2</sup>

Kuzior is Lincoln Tree Farm's neighbor to the north and disputes the legal and physical location of the boundary between his property and Lincoln Tree Farm. He alleges that the District and others committed several varieties of fraud in a concerted effort to steal his land. He also claims the District refused to recognize an easement across Lincoln Tree Farm that benefits Kuzior. Kuzior offered the trial court no evidence to support his claims.

In the trial court, the District demonstrated that the legal boundary between Lincoln Tree Farm and Kuzior's property has not changed in decades based on the recorded chain of title. The District

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<sup>1</sup> Kuzior refers to Tacoma Public Schools as Tacoma School District and Lincoln Tree Farm; rather, Tacoma Public Schools is the entity that owns the real property known as Lincoln Tree Farm.

<sup>2</sup> Kuzior began this matter in the trial court as a *pro se* litigant, but retained counsel during the pendency of the underlying matter. Counsel represented Kuzior at oral argument on the District's motion for summary judgment and through the beginning stages of his appeal. Before Kuzior's brief was submitted, counsel withdrew; Kuzior filed his brief *pro se*.

also commissioned a licensed surveyor to verify the physical placement of the survey monuments, markers, and tree flags. That survey confirmed the accuracy of the marked physical boundary to within three inches of the prior survey, performed in 1981. Finally, the District provided the trial court with title reports for Lincoln Tree Farm and the Kuzior Property that identified every easement burdening or benefitting each property. The title reports identified no easement across any portion of Lincoln Tree Farm benefitting Kuzior.

On appeal, Kuzior raises the new legal arguments that 1) he benefits from a prescriptive easement across Lincoln Tree Farm, and 2) he is the victim of an unconstitutional government "taking" without just compensation. These arguments are inappropriately raised for the first time on appeal. More importantly, there is no evidence to support these claims.

In light of the uncontroverted evidence proving the legal boundary between Lincoln Tree Farm and the Kuzior Property, the physical location marking that legal boundary, and the non-existence of any easement across Lincoln Tree Farm benefitting Kuzior, this Court should affirm the trial court's order granting the District's motion for summary judgment and quieting title in Lincoln Tree Farm.

## II. ASSIGNMENTS OF ERROR

Plaintiff-Appellant Skipper Kuzior (“Kuzior”) failed to identify any comprehensible assignments of error in his opening brief. Kuzior further failed to provide meaningful citations to the record in violation of RAP 10.3(a)(4) and (5). McKee v. Am. Home Products, Corp., 113 Wn.2d 701, 705, 782 P.2d 1045 (1980) (“We will not consider issues on appeal that are not raised by an assignment of error or are not supported by argument and citation to authority.”) These deficiencies are a sufficient basis to deny Kuzior’s appeal in its entirety, but at minimum, make it difficult for Tacoma Public Schools and Lincoln Tree Farm (collectively, the “District”) to formulate their response. The District acknowledges the *pro se* nature of Kuzior’s opening brief and will do its best to interpret and respond accordingly here.

### A. Issues Pertaining To Assignments Of Error.

The below issue statement addresses the issue raised in the District’s motion for summary judgment:

An action to quiet title is an equitable claim designed to resolve competing claims of ownership and is governed by RCW 7.28.010, which reads in relevant part:

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from the plaintiff's title.

The question before this Court is whether the trial court's decision granting summary judgment and quieting title should be affirmed where the District proved through recorded documents and land surveys 1) its superior title to Lincoln Tree Farm and 2) the absence of any easement benefitting Kuzior, and where 3) Kuzior failed to create any issue of material fact, relying solely on his narrative declaration.

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

#### **A. Introduction To The Parties And The Properties At Issue.**

Kuzior is the titled owner of the real property commonly known as 5501 264th Street East, Graham, WA 98338, with legal description "Lot 1 of Pierce County Large Lot Division No. 2303," Pierce County Tax Parcel No. 0418303015 (hereinafter, the "Kuzior Property"). CP000025. The southern boundary of the Kuzior Property is the line dividing sections 30 (to the North) and 31 (to the South) of Township 18 Range 4 E and is clearly shown on the survey

recorded with the Pierce County Auditor, Instrument No. 2303. CP000111 (Appendix 1, A-1).<sup>3</sup>

Kuzior's neighbor to the South is Lincoln Tree Farm, a 300+ acre property owned by the District. CP000035-37. The District uses Lincoln Tree Farm as a resource for teaching environmental stewardship to its students, as well as partnering with other local educational institutions and nonprofit groups for similar purposes, including orienteering, forestry, and firefighting training. CP000008. Trees on portions of Lincoln Tree Farm are occasionally harvested to generate revenue for the District. Id. The District obtained title to Lincoln Tree Farm in a series of transactions, beginning in the 1940s, but the boundaries have remained the same since at least 1981. Id. Lincoln Tree Farm's northern boundary is the line dividing sections

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<sup>3</sup> This fact is also deemed admitted by virtue of Kuzior's failure to respond to the District's Requests for Admission within the time prescribed by CR 36. The District's discovery requests to Kuzior, who was *pro se* at the time, included a letter encouraging him to retain counsel and explained that requests for admissions would be deemed admitted if not answered within 30 days. It also included a copy of the applicable Civil Rules. These discovery requests were served on December 13, 2017. On December 30, 2017, Kuzior's counsel informally appeared, but the January 16, 2018, deadline to respond to the discovery requests passed without Kuzior answering. The District's counsel made several attempts at conferring with Kuzior's counsel, and finally received discovery responses on February 21, 2018. Although Kuzior did answer the Requests for Admissions approximately five weeks after their deadline, all requests were denied with incomprehensible explanations. CP000008, CP000029-31.

30 and 31 of Township 18 Range 4 E. CP000107 (Appendix 2, A-2).

The District retained surveyor Daniel Roupe of Group Four, Inc. to identify the legal boundary and verify the marked physical boundary between the Kuzior Property and Lincoln Tree Farm. Roupe obtained the Title Report for each of the properties to identify the shared boundary according to the recorded chains of title. CP000093-95. Based on the legal descriptions in the recorded deeds, Roupe identified the boundary between the properties as the Section 30/31 Line. CP000104-105. This finding was consistent with the recorded surveys of both properties. CP000107-109, CP000111.

**B. Kuzior's Allegations Regarding The Boundary Line.**

The record clearly shows that, since at least 1981, the boundary line between the Kuzior Property and Lincoln Tree Farm has been the line that divides Sections 30 and 31 (hereinafter the "Section 30/31 Line"). This fact is proven by uncontroverted evidence, including recorded surveys and various conveyance documents, spanning several decades. See e.g. CP000099-113.

Nonetheless, on appeal, Kuzior alleges the District executed a boundary line adjustment in 2012 to obtain 1,102 linear feet of Kuzior's property. Br. of Appellant, at 4. Although not included in the

trial court record or the record on appeal, the boundary line adjustment Kuzior presumably refers to, however, took place involving two of Kuzior's neighbors to the East, the Hadmans and the Reitzugs. See CP000039-40. Neither Lincoln Tree Farm nor Kuzior were parties to that boundary line adjustment and it had no effect on Lincoln Tree Farm or the Kuzior Property.

Kuzior also alleges for the first time on appeal the District hired attorney Dianne Conway in 2016 to claim 1,102 linear feet of his property for the District under adverse possession. Br. of Appellant, at 4. Ms. Conway, in fact, never represented the District, but did represent Henry Reitzug (Kuzior's neighbor) in his real estate matters, including other litigation involving Kuzior. CP000039-41.

Despite Kuzior's various allegations, the recorded chain of title identifies the Section 30/31 Line as the boundary between the Kuzior Property and Lincoln Tree Farm. Kuzior alleged that the present physical locations of the survey monuments, posts, and tree flags marking that legal boundary are inaccurate by 1,102 linear feet, and are in their current locations as a result of someone fraudulently moving the physical survey monuments and markers. See *e.g.* CP000088. Kuzior cites to no evidence to support that claim.

Kuzior claimed ownership of a portion of Lincoln Tree Farm, including a 400 year-old “sacred cedar” tree, and alleged various acts of property damage on this land he purports to own based on the fraudulent relocation theory. See e.g. CP000004-5. Although these allegations receive only a passing reference on appeal (Br. of Appellant, at 4, 5), the trial court record contains no evidence whatsoever to support Kuzior’s claim that the physical boundary was somehow inaccurately marked or that any tortious acts occurred on, or to, Kuzior’s property.

The District retained licensed surveyor Daniel K. Roupe of Group Four, Inc. to identify the physical location of the legal boundary line. CP000093-94. Roupe surveyed the Section 30/31 Line using universally accepted industry practices and declared under penalty of perjury that the physical boundary marked by existing survey monuments, fence posts, and tree flags accurately reflected the legal descriptions and historical surveys to within three inches (3”). CP000095. Thus, the alleged timber trespass, gate, and lean-to all are clearly located on Lincoln Tree Farm property. Id. Likewise, the “sacred cedar” is clearly owned by Lincoln Tree Farm. Id. Roupe prepared a survey sketch to show the locations where these alleged tortious acts occurred. CP000113 (Appendix 3, A-3). Based upon

the Roupe survey, none of the alleged tortious acts would have or could have occurred on Kuzior's property.

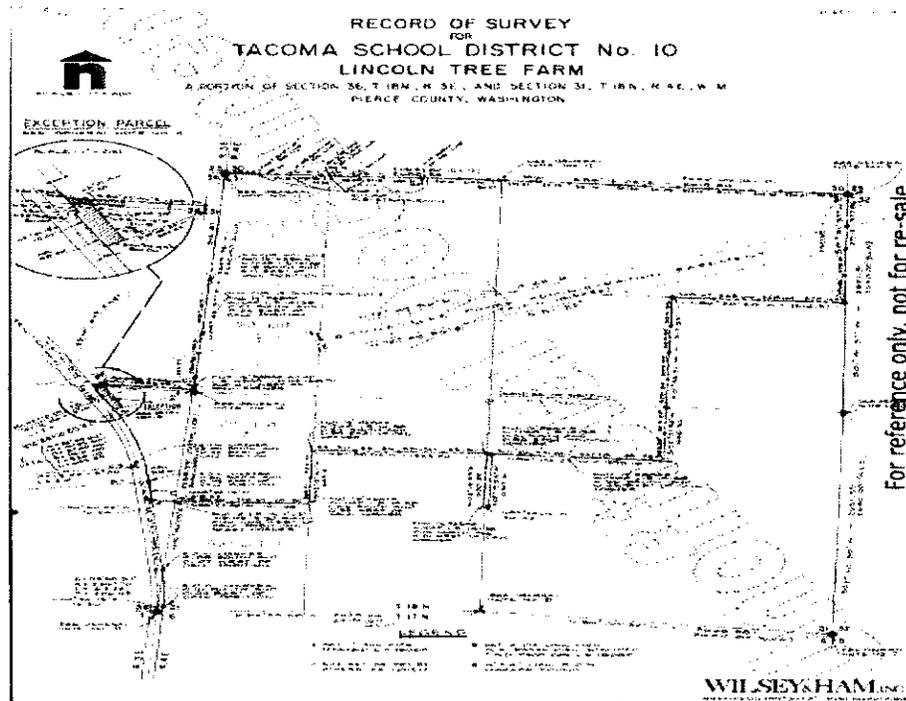
Finally, for the first time on appeal, Kuzior alleges the District committed a "taking" without just compensation in violation of the Sixth Amendment to the United States' Constitution. Br. of Appellant, at 14. Kuzior presents no evidence of any eminent domain action or any other acquisition of land by the District to support this claim. More importantly, the boundary between the Kuzior Property and Lincoln Tree Farm has not changed.

**C. Kuzior's Allegations Regarding An Easement Are Without Factual Support.**

Kuzior alleges he benefits from an easement for ingress and egress through an alleged, but unidentified, private road across Lincoln Tree Farm. Br. of Appellant at 6, 7, and 8. The District obtained a subdivision guarantee from Stewart Title Guarantee Company (the "Title Report") for the Kuzior Property and Lincoln Tree Farm which identifies all recorded easements burdening and benefitting both properties. CP000094, CP000098-105. The Title Report identifies no easement or private road across Lincoln Tree Farm benefitting Kuzior. *Id.* Based on this evidence, and the lack of any competent evidence by Kuzior creating any genuine dispute of

material fact, the trial court properly granted the District's motion for summary judgment.

Kuzior points to one recorded document as the basis for claiming an easement through Lincoln Tree Farm to access his property. CP000118. That document, however, is a quit claim deed granting a small portion of property on Lincoln Tree Farm's western boundary to "Tacoma School District No. 10" and, in exchange, reserving the "West 200 feet of the tract hereby conveyed as a means of ingress and egress" to the adjacent subdivision. Id. This easement is shown on the Wilsey & Ham survey<sup>4</sup>:



<sup>4</sup> For the Court's convenience, a full page copy of the Wilsey & Ham survey is included at Appendix 2.

The easement reserved to the quit claim grantors is the shaded portion on the far left side of that survey; by comparison, Kuzior's property, if it were identified on this survey, would be at the top near the middle. CP000107 (Appendix 2, A-2). The easement shaded on this survey has no relation to Kuzior.

Finally, and also for the first time on appeal, Kuzior alleges he benefits from a prescriptive easement over some portion of Lincoln Tree Farm. Br. of Appellant, at 9-14. Like Kuzior's other claims, Kuzior cites to no evidence to establish the required elements of a prescriptive easement.

#### **IV. SUMMARY OF ARGUMENT**

Kuzior appeals the trial court's order granting summary judgment and quieting title, affirming 1) the Section 30/31 Line as the legal boundary between the Kuzior Property and Lincoln Tree Farm, 2) the physical location of the Section 30/31 Line, and 3) the non-existence of any easement across Lincoln Tree Farm to Kuzior's benefit. The evidentiary record before the trial court and on appeal is entirely devoid of any evidence in support of any of Kuzior's claims.

The District presented ample evidence establishing that no genuine dispute of material fact existed to preclude summary

judgment. The recorded chains of title of both properties identify the Section 30/31 Line as the two properties' shared boundary. A licensed professional land surveyor verified that the placement of physical survey monuments, posts, and markers identified in historical recorded surveys of the property exist today and are accurate to within three inches of their true location. Finally, the District presented title reports identifying any and all easements burdening or benefitting Lincoln Tree Farm and the Kuzior Property; the title reports confirmed that no easement exists across Lincoln Tree Farm to Kuzior's benefit. Each of the easements Kuzior claims benefit him or his property either 1) burden Lincoln Tree Farm but do not benefit Kuzior, or 2) benefit Kuzior but do not burden Lincoln Tree Farm.

On appeal, Kuzior improperly raises two additional arguments for the first time. First, Kuzior now argues he is entitled to a prescriptive easement, although he fails to identify the location of the easement with any particularity. Likewise, facts do not exist (in the evidentiary record, or otherwise) to support a claim of prescriptive easement. Finally, Kuzior now also alleges he is the victim of an unconstitutional government "taking" without just compensation. Since the District did not take any portion of Kuzior's land and Lincoln

Tree Farm's boundaries have been unchanged for decades, this claim is similarly without merit.

This appeal and the underlying claims continue Kuzior's pattern of frivolous and vexation litigation. In addition to affirming the trial court's order granting the District's motion for summary judgment, this Court should also find Kuzior's appeal frivolous and should award the District its costs and reasonable attorneys' fees incurred in responding to this meritless appeal.

## **V. ARGUMENT**

Kuzior began this litigation in the trial court as a *pro se* litigant. His first complaint<sup>5</sup> was dismissed for failure to provide the District with notice of a tort claim, pursuant to RCW 4.96.010. Kuzior subsequently filed a notice of tort claim with the District, waited the requisite period of time, and re-filed a more descriptive version of his original complaint. During discovery, at the District's urging, Kuzior retained counsel. Counsel represented Kuzior at oral argument on the District's motion for summary judgment and through the beginning stages of his appeal. Before Kuzior's brief was submitted, his counsel withdrew and Kuzior is now, again, proceeding *pro se*.

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<sup>5</sup> Pierce County Superior Court No. 16-2-12081-5.

Kuzior's brief is vague, unclear, and fails to identify the grounds or basis for his appeal. As a result, the District uses its best efforts to interpret Kuzior's arguments and provide an opposition to the appeal, and request that its attorneys' fees be awarded as a sanction for Kuzior filing this frivolous appeal. The District also notes that Kuzior failed to support countless arguments or statements of fact by meaningful reference to the record or citation to relevant authority. RAP 10.3(a)(5). Kuzior's failure to cite to the record, provide assignments of error, or to provide citations to relevant authority alone are grounds to reject Kuzior's appeal. McKee, 113 Wn.2d at 705. ("We will not consider issues on appeal that are not raised by an assignment of error or are not supported by argument and citation of authority.") Despite the foregoing, the following argument confirms the appropriateness of the trial court's ruling below.

**A. Standard Of Review.**

Kuzior's brief fails to address the standard for granting summary judgment and lacks any rational argument regarding the legal or factual basis why the trial court's order on the District's motion for summary judgment was improper. Instead, Kuzior asserts

the trial judge was “confused” and presents other wildly false assertions of fact, all without evidentiary support.

This Court may affirm an order granting summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 278–79, 937 P.2d 1082 (1997). The trial court found no genuine dispute of any material fact as to any of Kuzior’s claims, including the legal boundary between the Kuzior Property and Lincoln Tree Farm based on the record chain of title, the physical location of that legal boundary, and the absence of any easement across Lincoln Tree Farm benefitting Kuzior. Accordingly, the trial court dismissed Kuzior’s claims and entered an order affirming the legal and physical boundary between the properties and the non-existence of an easement benefitting Kuzior. This Court should affirm the trial court’s order granting summary judgment because the record contains no genuine dispute of material fact and the District was entitled to judgment as a matter of law.

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**B. The Trial Court Properly Granted Summary Judgment Because No Genuine Dispute Of Material Fact Existed As To The Location Of Lincoln Tree Farm's Boundary And The Non-Existence Of Any Alleged Easements Benefitting Kuzior.**

The trial court's order granting summary judgment should be affirmed because the record contains no genuine dispute of material fact that the District is the rightful legal owner of all portions of Lincoln Tree Farm, consistent with the numerous historical and recent land surveys and the recorded title history. The trial court further determined that Kuzior's claims that the District somehow fraudulently moved the boundary were likewise without any evidentiary support. To oppose summary judgment, Kuzior relied upon: 1) his own unsupported assertions to argue for ownership of some portion of Lincoln Tree Farm and his alleged easement across Lincoln Tree Farm, and 2) a quit claim deed from 1951 that clearly describes an unrelated property. The trial court correctly found that the recorded chain of title and multiple surveys conducted by independent and licensed professional land surveyors over several decades left no genuine dispute of material fact.

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1. The District proved ownership of all disputed portions of Lincoln Tree Farm.

“A quiet title action is equitable and designed to resolve competing claims of ownership to property.” Byrd v. Pierce County, 5 Wn. App. 2d 249, 265, 425 P.3d 948 (2018) (internal citations omitted). See also RCW 7.28.010:

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from the plaintiff's title.

Id. “Washington law provides that the plaintiff in a quiet title action shall set forth in his or her complaint the *nature of his or her estate, claim, or title to the property*, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail.” Id. (*emphasis original*) (internal citations omitted). See also RCW 7.28.120.

Kuzior leveled numerous allegations against the District arising from his alleged ownership of some portion of Lincoln Tree Farm, but never identified the property he claims to own and never provided any evidentiary support for this position. Although these various causes of action were not defined with any particularity in

Kuzior's complaint, they seem to include timber trespass, conversion, fraud, and quiet title. All of Kuzior's causes of action turn on the question of ownership of a "disputed" portion of Lincoln Tree Farm. Kuzior offered only his declaration to support these claims.

The District retained surveyor Daniel Roupe<sup>6</sup> of Group Four, Inc. to identify the legal boundary and verify the marked physical boundary between the Kuzior Property and Lincoln Tree Farm. Roupe obtained the Title Report for each of the properties to identify the shared boundary according to the recorded chains of title. CP000093-95. Based on the legal descriptions in the recorded deeds, Roupe identified the boundary between the properties as the Section 30/31 Line. CP000104-105. This finding was consistent with the recorded surveys of both properties. CP000107-109, CP000111. As described above, this fact is also deemed admitted by virtue of late and improper denials of Requests for Admissions. See CP000029-31.

Kuzior made several arguments in an effort to discredit the recorded documents, but the record contains no evidence to support

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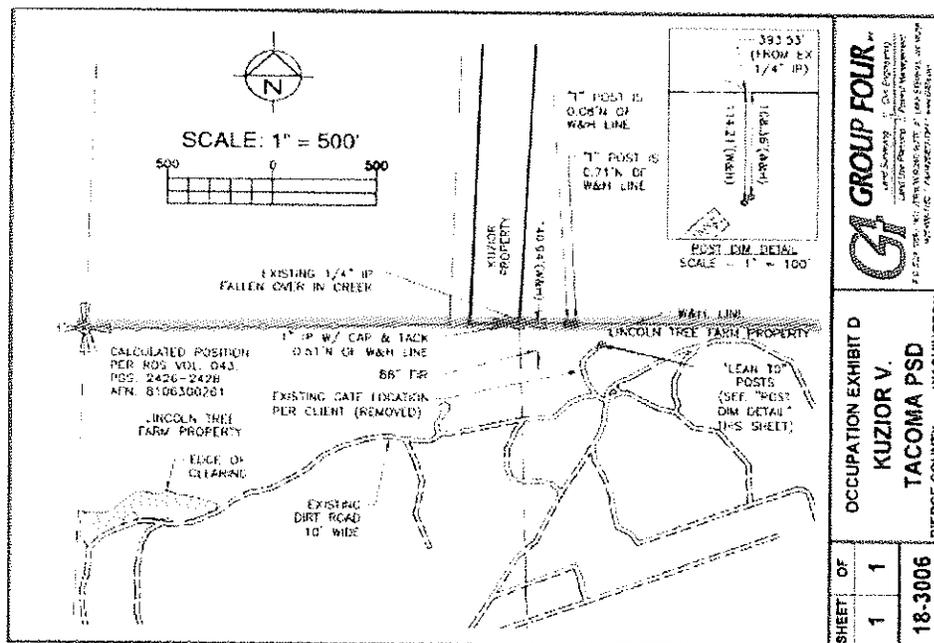
<sup>6</sup> Kuzior's assertion that Roupe's opinions and/or survey is improper or incorrect because he is licensed in "Lake Stevens County" merits no serious consideration by this Court, but cannot go unaddressed. Br. of Appellant, at 5. Group Four, Inc. is based in Lake Stevens, Snohomish County, but Roupe's Professional Land Surveyor license is valid statewide. See Chapter 18.43 RCW.

those allegations. Specifically, Kuzior alleged the historical surveys of Lincoln Tree Farm were somehow fraudulent and alleged that several State and/or County employees could corroborate his story. CP000002-4. The record contains no evidence to support this claim. Kuzior also alleged the District participated in some unspecified fraud relating to a 2012 boundary line adjustment involving two of Kuzior's easterly neighbors, Mark Hadman and Henry Reitzug. Br. of Appellant, at 4-6. The record contains no evidence to support this claim, either.

Likewise, Kuzior's claim that someone, somehow, fraudulently moved the survey monuments, posts, and tree flags that identify the boundary by 1,102 feet is unsupported by any evidence. CP000004, CP00088. Roupe surveyed the physical location of the boundary line using universally accepted surveying methods, located the survey monuments identified on the Wilsey & Ham survey, and determined the existing survey monuments to be accurate to within three inches (3") of his survey.

Based on the legal boundary and his physical survey, Roupe created a survey sketch of the relevant portions of Lincoln Tree Farm and the Kuzior Property. CP000113 (Appendix 3, A-3). This survey sketch identifies the Section 30/31 Line (horizontal and shaded)

constituting the shared boundary between Lincoln Tree Farm to the south, and the Kuzior Property, to the north. The locations of the alleged timber trespass, conversion, and property damage are each shaded, and each such location is clearly within Lincoln Tree Farm's boundary.



The District vehemently denies it committed any torts, but even if any of the actions Kuzior alleges did occur, the evidence clearly establishes the locations of such actions were clearly on Lincoln Tree Farm land. Thus, to the extent any property damage or timber harvest occurred, it occurred on Lincoln Tree Farm property, not on Kuzior's property. The record contains no evidence to the contrary.

Absent controverting evidence from Kuzior to establish a disputed material fact as to the boundary line, the trial court correctly dismissed Kuzior's claims and determined that the legal boundary of Lincoln Tree Farm as represented in the 1981 Wilsey & Ham, Inc. survey, recorded under Pierce County Recorder's Certificate Number 8106300261, is true and correct and is accurately marked to represent the recorded legal description of Lincoln Tree Farm. CP000154.

2. The District proved Kuzior owns no easement over any portion of Lincoln Tree Farm. Kuzior provided no evidence to create a genuine dispute of material fact that would preclude summary judgment.

While Kuzior's complaint alleges he benefits from several varieties of easements, he fails to identify the location of any alleged easement or provide any evidence that such an easement exists. Kuzior's allegations are varied, internally inconsistent, and often mutually exclusive. The trial court properly found there was no genuine dispute of material fact as to whether there was any easement benefitting Kuzior across Lincoln Tree Farm.

First, Kuzior alleges his family owns "an easement road at the top of the hill." CP000002, CP000005. It is unclear, still, what road and what hill Kuzior refers to. Two existing easements might be the

subject of Kuzior's reference, although neither easement benefits Kuzior. First, the Wilsey & Ham survey identifies an easement approximately 200' feet wide, beginning at Lincoln Tree Farm's western boundary and running northeast in the same approximate vicinity to a network of roads through Lincoln Tree Farm. CP000107 (Appendix 2, A-2). This easement is clearly identified as the Bonneville Power Administration Easement on the Wilsey & Ham survey and is identified as an easement for electric "transmission line(s)" in item number four of the title report for Lincoln Tree Farm. CP000099. This easement does not benefit Kuzior personally or the Kuzior Property; the record contains no evidence to the contrary.

The other easement to which Kuzior may be referring is located on the western boundary of Lincoln Tree Farm and creates a short private road to access a small residential subdivision to the west of Lincoln Tree Farm. CP000107 (Appendix 2, A-2). This easement was created by a quit claim deed granting a portion of land east of the "National Park Highway" (now known as Highway 7) to "Tacoma School District No. 10," but retaining an easement for ingress and egress between the subdivision and the Highway. CP000118. Importantly, the legal description identifies the granted tract and retained easement as within Section 36. CP000118.

Kuzior's property is not in Section 36 and is not near Section 36. See CP000111 (Appendix 1, A-1). At oral argument on the District's motion for summary judgment, the trial court recognized that this quit claimed easement "doesn't in any way impact ... Kuzior's claim." VRP 9. The road and easement described in this quit claim deed do not benefit Kuzior and do not legally or practically provide ingress or egress to Kuzior's property. Kuzior presents no evidence to the contrary.

In his various pleadings, Kuzior references other recorded documents, but none of which actually grant Kuzior an easement across Lincoln Tree Farm. For example, Kuzior references easement No. 8502250199.<sup>7</sup> CP000115. This document creates an easement for a road and power lines which is wholly contained within Section 30. Kuzior's property is within Section 30; however, no portion of Lincoln Tree Farm is within Section 30. Thus, this easement does not burden Lincoln Tree Farm. Rather, this easement appears related to municipal power lines along 264th Street East. The same is true for Survey No. 1444.<sup>8</sup> CP000116.

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<sup>7</sup> Easement No. 8502250199 is not contained within the evidentiary record provided to the Court of Appeals and was not presented to the trial court.

<sup>8</sup> Survey No. 1444 is not contained within the evidentiary record provided to the Court of Appeals and was not presented to the trial court.

This survey shows the Rainier Ranches subdivision, wholly contained within Section 30; for the same reason as above, this easement does not burden Lincoln Tree Farm.

All of the above analysis is consistent with Roupe's opinion of the title report, derived from the recorded chain of title. CP000094. Roupe determined that the chains of title for Lincoln Tree Farm and the Kuzior Property show that "[Kuzior] neither owns nor benefits from any recorded easement burdening any portion of Lincoln Tree Farm." CP000094. Accordingly, the trial court's order finding that Kuzior neither owns nor benefits from any easement across Lincoln Tree Farm should be affirmed.

3. Kuzior offers no evidence to support his claims, let alone sufficient to create a genuine dispute of material fact at the trial court.

At the trial court and thus on this appeal, Kuzior's claims are devoid of any evidentiary support. The limited evidence offered by Kuzior, other than his narrative declaration, supports the recorded chain of title identifying the boundary between Lincoln Tree Farm and the Kuzior Property as the Section 30/31 Line, with Lincoln Tree Farm south of the line (in Section 31), and Kuzior's property north of the line (in Section 30). Kuzior presents no evidence in support of his numerous allegations of fraudulent surveys and conspiracies

among neighbors and their attorney (all of which were made under penalty of perjury). Thus, the trial court properly affirmed the recorded legal boundary between the properties.

Likewise, Kuzior presents only his conclusory declaration to support his claims that someone fraudulently relocated the survey monuments, posts, and tree flags to steal 1,102 linear feet of his property. However, the District moved to strike the inadmissible portions of Kuzior's declaration, which was granted by the trial court. CP000126-127, CP000154. Multiple surveys spanning several decades all confirmed the well-established physical location of the boundary. Kuzior offered the trial court no evidence to the contrary. Thus, the trial court properly affirmed the physical boundary between the properties.

Finally, Kuzior presents no evidence in support of his claim that he owns or benefits from any easement across Lincoln Tree Farm. Kuzior references several recorded documents, but none of them create an easement that burdens Lincoln Tree Farm and benefits Kuzior. Although Kuzior cites an easement burdening Lincoln Tree Farm, that easement serves a purpose wholly unrelated to, and without benefitting, Kuzior. Kuzior offered the trial court no evidence to the contrary. Thus, the trial court properly affirmed the

non-existence of any easement across Lincoln Tree Farm benefitting Kuzior.

The trial court's order granting summary judgment to the District should be affirmed.

**C. Kuzior's Argument For A Prescriptive Easement Is Improperly Raised On Appeal And Is Legally And Factually Meritless.**

Kuzior now claims on appeal he benefits from a prescriptive easement across some portion of Lincoln Tree Farm. This argument is improperly raised for the first time on appeal and should receive no consideration. However, to the extent this Court considers such argument, this Court should affirm the trial court's decision because Kuzior's claim of a prescriptive easement lacks any legal or evidentiary support.

1. Kuzior's argument for a prescriptive easement is improperly raised on appeal.

Kuzior raises the new argument on appeal that he benefits from a prescriptive easement over some portion of Lincoln Tree Farm. Br. of Appellant, at 9-14. "In general, issues not raised in the trial court may not be raised on appeal." Robertson v. Perez, 156 Wn.2d 33, 39, 123 P.3d 844 (2005); RAP 2.5(a) (an "appellate court

may refuse to review any claim of error which was not raised in the trial court.”) In limited circumstances, exceptions may apply:

However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right.

RAP 2.5(a). Kuzior’s argument that he benefits from a prescriptive easement over some portion of Lincoln Tree Farm was not raised in the trial court and does not fit within any of RAP 2.5(a)’s three exceptions.

Kuzior argued to the trial court that he purchased an easement from Lincoln Tree Farm at some unknown time in the past; the trial court found he presented no evidence to support this argument. CP000115. Kuzior now asks this Court to establish a prescriptive easement in his favor. This Court should not allow Kuzior’s new argument, which lacks factual and legal support, to disturb the trial court’s decision.

2. The evidence does not support Kuzior’s claim of a prescriptive easement.

Kuzior presented the trial court no evidence to support the existence of a prescriptive easement; likewise, no such evidence is contained within the appellate record. To establish a prescriptive

easement, Kuzior must prove that “his use of the other’s land has been open, notorious, continuous, uninterrupted, over a uniform route, adverse to the owner of the land sought to be subjected, and with the knowledge of such owner at a time when he was able in law to assert and enforce his rights.” Gamboa v. Clark, 180 Wn. App. 256, 267, 321 P.3d 1236 (2014). Kuzior made no attempt to prove the elements required to establish a prescriptive easement before the trial court and the record contains no evidence to support such an argument on appeal.

To the contrary, the evidentiary record shows that a prescriptive easement is not present, here. The statutory period for adverse possession, including for a prescriptive easement, is ten years of continuous use. LeBleu v. Aalgaard, 193 Wn. App. 66, 80, 371 P.3d 76 (2016); RCW 4.16.020. Here, Kuzior purchased his property in December 2015. CP000025. Even if he immediately began to openly, notoriously, continuously, and without interruption blaze a trail through Lincoln Tree Farm to his property on the day he acquired it, a claim for a prescriptive easement would not ripen until December of 2025.<sup>9</sup> On that basis alone, no prescriptive easement

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<sup>9</sup> The District acknowledges that the doctrine of “tacking” could impact this analysis, but the record contains no evidence to support a tacking claim, either.

exists. Granite Beach Holdings, LLC v. State ex rel. Dept. of Natural Resources, 103 Wn. App. 186, 201, 11 P.3d 847 (2000).

Further, and critical to any contemplated grant of easement, Kuzior fails to identify where the actual claimed easement lies. A claimant alleging a prescriptive easement must identify “a uniform route” that becomes the easement. Kunkel v. Fisher, 106 Wn. App. 599, 602, 23 P.3d 1128 (2001). Instead, Kuzior purports to claim some “200 feet of ingress and egress,” without identifying where that 200 feet lies. CP000116. Kuzior goes on to admit the 200 foot easement he claims is over five blocks away from his property.<sup>10</sup> CP000116. To the extent Kuzior relies upon a claim of right to 200 feet for ingress and egress between Highway 7 and his property, Kuzior acknowledges that his property is far more than 200 feet from Highway 7; thus, no 200-foot easement could provide the ingress or egress he seeks.

Accordingly, the trial court’s finding that no easement exists to Kuzior’s benefit should be affirmed because Kuzior presented no argument for a prescriptive easement to the trial court and the

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<sup>10</sup> Presumably, Kuzior refers to the private road easement arising from the 1951 quit claim deed, previously discussed.

evidentiary record would not support the existence of such an easement.

**D. Kuzior's Unconstitutional Government "Taking" Argument Is Also Improperly Raised For The First Time On Appeal; However, Such An Argument Is Also Meritless And Without Evidentiary Support.**

Kuzior argues for the first time on appeal that he is the victim of an unconstitutional government "taking" without just compensation and seeks redress under the Sixth Amendment to the United States Constitution. Br. of Appellant at 14. Although this argument invokes constitutional considerations, it remains an impermissible new argument before the appellate court.

"RAP 2.5(a)(3) was not designed to allow parties a means for obtaining new trials whenever they can identify a constitutional issue not litigated below." State v. WWJ Corp., 138 Wn.2d 595, 602, 980 P.2d 1257 (1999) (internal citations omitted). This exception to the general prohibition on raising new arguments on appeal is construed "narrowly by requiring the asserted error to be (1) manifest and (2) truly of constitutional magnitude." Id. (internal citations omitted).

"An alleged error is manifest only if it results in a concrete detriment to the claimant's constitutional rights, and the claimed error rests upon a plausible argument that is supported by the record." Id.

at 603. Here, Kuzior's claim of an unconstitutional government "taking" is wholly unsupported by the record and should not disturb the trial court's well-founded decision.

To the contrary, the trial court found that the boundary between Kuzior's property and Lincoln Tree Farm was accurately surveyed (recently and historically) and accurately reflected the recorded legal descriptions of Kuzior's property and Lincoln Tree Farm. CP000154. Based on the recorded chain of title and surveys by several independent and licensed surveyors, the boundary of Lincoln Tree Farm has not changed in decades. Thus, there was no transfer of land and there was no "taking."

The new allegation of an unconstitutional government "taking" is not a manifest error affecting a constitutional right and is directly contrary to the evidentiary record. Accordingly, the trial court's decision should be affirmed.

**E. Issues That Kuzior Did Not Address In His Opening Brief Have Been Waived.**

The District expects that Kuzior may try to assert new arguments or raise more issues in his reply brief. To the extent Kuzior raises new issues for the first time in his response brief, any such argument must be rejected. Cowiche Canyon Conservancy v.

Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (“An issue raised and argued for the first time in a reply brief is too late to warrant consideration.”)

As the moving party, Kuzior had several months to prepare his opening brief. He had an obligation to identify the Assignments of Error, “together with the issues pertaining to the assignments of error.” RAP 10.3(a)(4). The fact that he failed to do so is his burden.

**F. This Court Should Award The District Its Attorneys’ Fees Incurred In Defending Against Kuzior’s Frivolous Appeal.**

Kuzior’s appeal is so devoid of merit that it is frivolous and subjects Kuzior to a sanction of the District’s costs and attorneys’ fees for necessitating the defense of this appeal. While there is a strong presumption regarding the right of a litigant to appeal and that all doubts about whether an appeal is frivolous should be resolved in favor of the appellant, Kuzior’s appeal lacks any justification “and it is so totally devoid of merit that there was no reasonable possibility of reversal.” Streater v. White, 26 Wn. App. 430, 435, 613 P.2d 187 (1980). This frivolous appeal continues a pattern of meritless and vexatious litigation by Kuzior. See e.g. CP000039-41. He should not be allowed to continue forcing those around him to incur the costs of defending against his vexatious and meritless claims. CP000018-

19. This Court is authorized to, and should, award the District its costs and attorneys' fees incurred in responding to Kuzior's frivolous appeal.

## VI. CONCLUSION

For all the foregoing reasons, the District requests this Court affirm the trial court's order on the District's Motion for Summary Judgment and award the District its costs and reasonable attorneys' fees as a sanction for filing this frivolous appeal.

Dated this 28th day of March, 2018

Respectfully submitted,

/s/ Mark F. O'Donnell

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Attorneys for Respondents Tacoma  
School District and Lincoln Tree Farm

## VII. APPENDIX

| <b>Appendix<br/>No.</b> | <b>Description</b>                                 | <b>Page</b> |
|-------------------------|--|-------------|
| 1.                      | Survey of Kuzior Property.....                     | A-1         |
| 2.                      | Wilsey & Ham, Inc. Survey of Lincoln Tree Farm ... | A-2         |
| 3.                      | Group Four, Inc. / Roupe Survey Sketch.....        | A-3         |



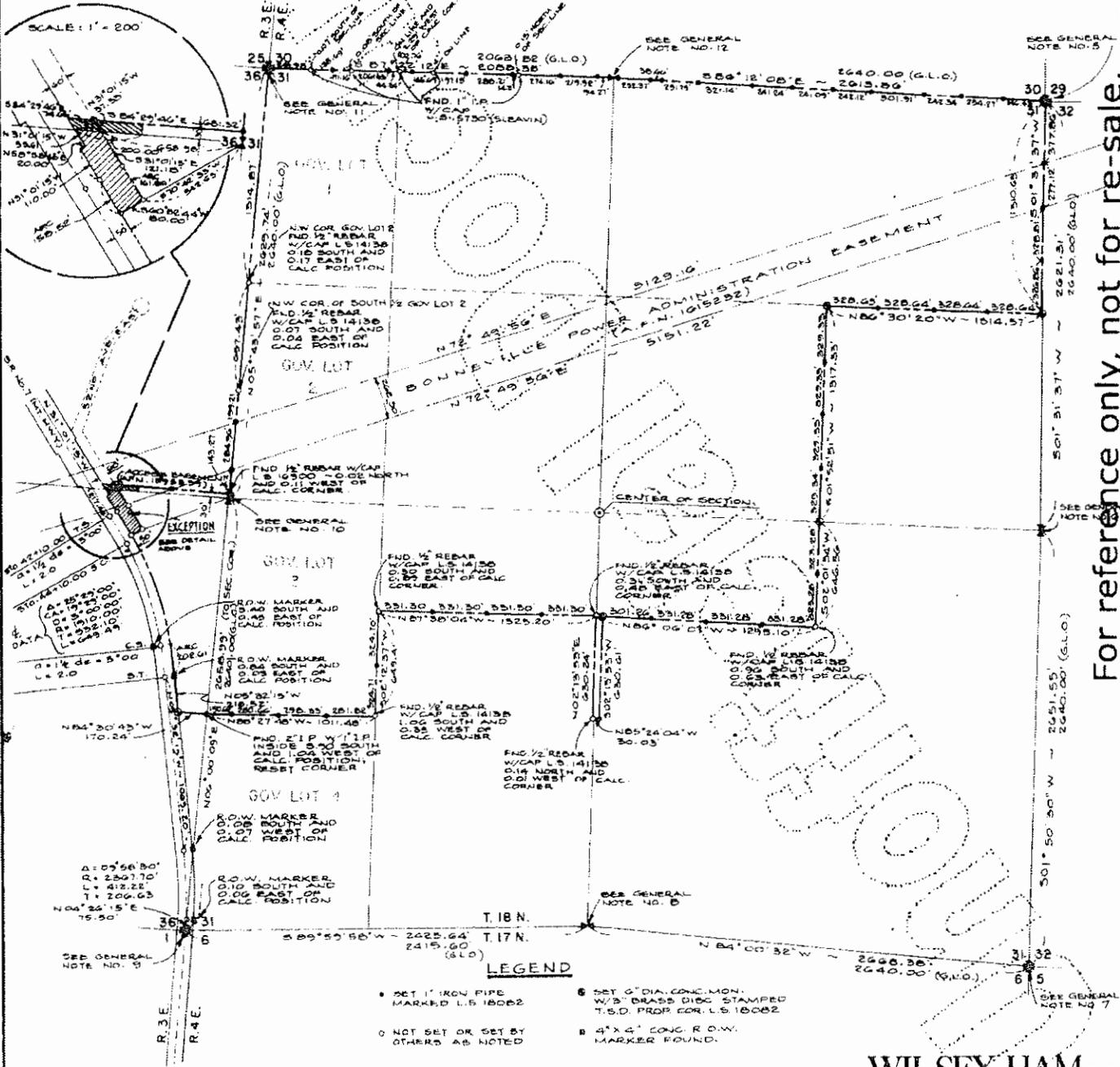
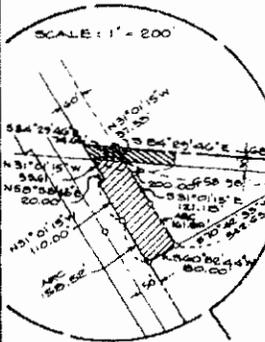
# RECORD OF SURVEY FOR TACOMA SCHOOL DISTRICT No. 10 LINCOLN TREE FARM

A PORTION OF SECTION 36, T. 18N., R. 3E., AND SECTION 31, T. 18N., R. 4E., W. M.  
PIERCE COUNTY, WASHINGTON



SCALE: 1" = 400'

**EXCEPTION PARCEL**  
SEE GENERAL NOTE NO. 4

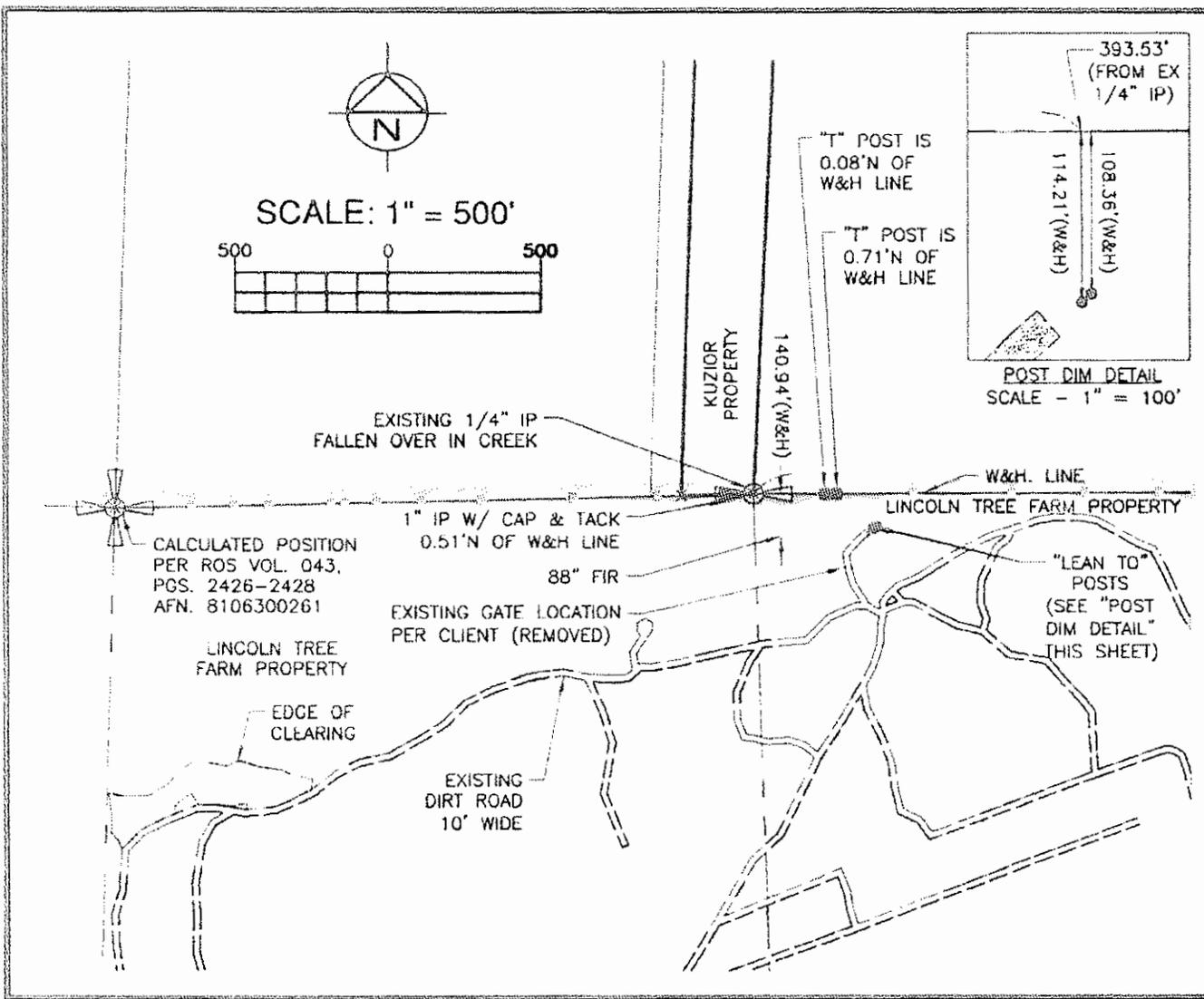


### LEGEND

- SET 1" IRON PIPE MARKED L.S. 10002
- NOT SET OR SET BY OTHERS AS NOTED
- ◻ SET 6" DIA. CONC. MON. W/ 3" BRASS DISC STAMPED T.S.D. PROP. COR. L.S. 10002
- ◻ 4" x 4" CONC. R.O.W. MARKER FOUND.

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**OCCUPATION EXHIBIT D**  
**KUZIOR V.**  
**TACOMA PSD**  
 PIERCE COUNTY WASHINGTON

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**18-3006**

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SKIPPER WILLIAM  
KUZIOR,

Appellant,

v.

TACOMA SCHOOL  
DISTRICT and LINCOLN  
TREE FARM

Respondents.

CASE NO. 51913-5-II

DECLARATION OF  
SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this day the undersigned caused to be served in the manner indicated below a copy of:

1. Brief of Respondents with Appendix; and
2. Declaration of Service

directed to the following individual:

**Via Electronic Service and  
First Class Mail**

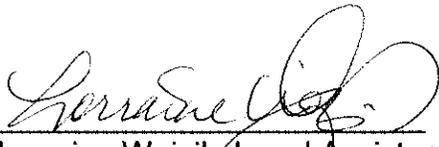
Mr. Skipper Kuzior  
5501 264<sup>th</sup> Street E.  
Graham, WA 98338  
Email: [kuziorkrush@gmail.com](mailto:kuziorkrush@gmail.com)

X  
            
X  
          

**Via U.S. Mail  
Via Facsimile  
Via Email**

***Pro se Appellant***

DATED at Seattle, Washington, this 28<sup>th</sup> day of  
March, 2019.

  
\_\_\_\_\_  
Lorraine Wojcik, Legal Assistant

**PREG O DONNELL ET AL**

**March 28, 2019 - 2:27 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51913-5  
**Appellate Court Case Title:** Skipper W. Kuzior, Appellant v. Tacoma School District Lincoln Tree Farm, Respondent  
**Superior Court Case Number:** 17-2-12326-4

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