

**FILED**

AUG 27 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**No. 331598**

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

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**MARK and JENNIFER HANNA, husband and wife,**

**Appellants,**

**v.**

**ALLAN AND GINA MARGITAN, husband and wife, and HAROLD  
L. AND PATRICIA CROWSTON, husband and wife, DAN R. BOND  
and JANE DOE BOND, Husband and wife, DAN M. BOND and  
JANE DOE BOND, husband and wife, RYKEN LIVING TRUST 18  
and Trustees Carl and Carole Ryken, STEVE and SHANNON  
MOSER, husband and wife, and AVISTA CORPORATION,  
INLAND POWER AND LIGHT CO.,**

**Respondents**

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**APPELLANTS' REPLY BRIEF**

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## INTRODUCTION

So much of the argument in the case has been about the supremacy of easement common law over the Land Use Petition Act (“LUPA”) and, from the Respondents’ perspective, how the legislature is powerless to pass a law that takes away a private property easement interest. But the key to understanding the Hannas’ position is that LUPA is blind to the *contents* of the “land use decision” if no one appeals the decision within 21 days. The “land use decision” could have been blatantly illegal, as the Respondents argue here, but no one gets to raise that illegal issue if there is no appeal. It is precisely the contents of the “land use decision” from 2000 and 2002 that the Respondents would like to address and correct the Short Plat that does not include their easements.

Of course, at the other end of the spectrum, the Margitans and Inland Power and Light claim to have *carte blanche* to sprinkle easements hither and thither over Riparian Areas and wetlands on a final short plat without notice and approval of Spokane County; a position that runs contrary to RCW 58.17.

It would appear that there is agreement among the parties, without exception, as to certain issues. First, the parties agree there are several easements recorded in favor of some Respondents prior to the creation of Short Plat 1227-00 (“Short Plat”) and easements granted to the Margitans

and Inland Power recorded after the Short Plat was created. Second, Spokane County gave its approval of the Short Plat application in May of 2000. Third, that the Final Short Plat was recorded in April of 2002. Fourth, that those having easements prior to the creation of the Short Plat have argued that the Short Plat process has no effect on privately granted easements and, as a result, the Land Use Petition Act (RCW 36.70C) (“LUPA”) does not apply. Fifth, the Hannas have argued that LUPA applies to “any” issue, not otherwise excluded under RCW 36.70C.030, including private easements, and if a party has not complied with LUPA’s 21 day Statute of Limitations a Superior Court is without jurisdiction to entertain Respondents arguments. Sixth, the Hannas have argued that because their were pre-existing easements appearing on the *preliminary* Short Plat but excluded from *Final* Short Plat by Spokane County and that no one appealed the Final Short Plat approval, the pre-existing easements cannot be resurrected by court order and included in the Final Short Plat without an amendment to the Short Plat. Seventh, Inland Power and the Margitans argue that any person may place, at any time and in any number, lawful privately granted easements on a Final Short Plat without amending the Final Short Plat and without the approval of Spokane County or compliance with any local land use regulations or pursuant to RCW 58.17. Eight, the Respondents have argued that LUPA is

unconstitutional if indeed it allows for the termination of privately granted easements if a party has not filed an appeal within LUPA's 21 day Statute of Limitations. Ninth, the parties agree the un-appealed Summary Judgment Order of May 24, 2013 states that LUPA applies to the Short Plat and that the Final Short Plat Map from March of 2002 is a "land use decision" under LUPA and no one appealed the "land use decision" from either 2000 or 2002.

## **ARGUMENT**

### STATUTORY CONSTRUCTION

This case is, in the main, about statutory construction and the extent of LUPA's applicability to the facts in this case. In addressing the applicability of LUPA our Supreme Court said: "When statutory language is plain and unambiguous, the statute's meaning must be derived from the wording of the statute itself. If the language of a statute is clear on its face, courts must give effect to its plain meaning and should assume the Legislature means exactly what it says. In ascertaining the legislative intent in the enactment of a statute, the state of the law prior to its adoption must be given consideration. But where ... a statute is plain and unambiguous, it must be construed in conformity to its obvious meaning without regard to the previous state of the common law. This court is

“obliged to give the plain language of a statute its full effect, even when its results may seem *unduly harsh*.” Chelan County v. Nykriem, 146 Wash. 2d 904, 931, 52 P. 3d 1 (2002). (Emphasis Ours). “Construing the express language of RCW 36.70C.030(1) (“[t]his chapter replaces the writ of certiorari for appeal of land use decisions and shall be the *exclusive* means of judicial review of land use decisions”) (emphasis added) according to its obvious meaning *without regard to previous common law* or, in this case, chapter 7.16. RCW, all land use decisions are subject to LUPA unless specifically excluded under RCW 36.70C.030.” *Id. at P. 931*. The Chelan County v. Nykriem decision then cited State ex rel. Madden v. Pub. Util. Dist. No. 1 of Douglas County, 83 Wash.2d 219, 222, 517 P.2d 585 (1973). Our State is governed by the common law only to the extent that the common law is not inconsistent with statute. Potter v. Wash State Patrol, 165 Wn. 2d 67, 76, 196 P. 3d 691 (2008). “. . . and courts cannot simply ignore statutes that conflict with case law.” , as the trial court did in this case. Wynn v. Earin, 131 Wn. 2d 28, 39, 125 P. 3d 236 (2005).

In State ex rel. Madden Madden requested a perpetual easement from Douglas County, an easement not included in his deed from the county. *Id at P. 220*. Douglas County argued that, in a contract and deed for the sale of real estate, an earlier rule of common law controls over a later statute in derogation of the common law rule unless the statute is

expressly incorporated by reference into the deed. In *State ex rel. Madden* RCW 54.16.220 provided that the County was required to grant a perpetual easement but the common law rule said the opposite. The Supreme Court said in agreeing with Madden:

There is no vested right in an existing law—common law or statutory—which precludes its change or repeal. A statute which is clearly designed as a substitute for the prior common law must be given effect. Where, as here, the provisions of a later statute are so inconsistent with and repugnant to the prior common law that both cannot simultaneously be in force, the statute will be deemed to abrogate the common law. It is a general rule of interpretation to assume that the legislature was aware of the established common law rules applicable to the subject matter of the statute when it was enacted. In ascertaining the legislative intent in the enactment of a statute, the state of the law prior to its adoption must be given consideration. But where, as here, a statute is plain and unambiguous, it must be construed in conformity to its obvious meaning without regard to the previous state of the common law. *Id at P. 221-222.*

The theoretical conflict in this case is between the privately granted easement cases cited by the Respondents with easements recorded before the creation of Short Plat 1227-00 and LUPA. But before we fully address this issue we need to resolve an argument made by the Respondents that the Final Short Plat “Map” finalized and recorded in 2002 is not a “land use decision” under LUPA and the Final Short Plat approved by a multitude of Spokane County Departments is just a “fictional” “land use decision”.

The Respondents Ryken have argued that the issue that LUPA abrogates any common law related to easement extinguishments is raised for the first time on appeal. Courtesy requires that the Hannas respond by stating that this position is at a minimum disingenuous. The position held by the Hannas, at all times and in all trial court documents, has been that LUPA's Statute of Limitation applies to the Short Plat to extinguish all those easements not depicted on the face of the Short Plat after the "land use decision" was made by Spokane County in May of 2000. The Respondents' position has always been that LUPA does not abrogate the common law on the extinguishment of easements. The cases noted above cite the court to language from Chelan County v. Nykriem, 146 Wash. 2d 904, 931, 52 P. 3d 1 (2002), an oft cited case in these proceedings and standing for the proposition that LUPA is the *exclusive* means of judicial review of land use decisions and should be interpreted according to its obvious meaning "*without regard to previous common law*"

A "land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on: An Application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred or used. RCW 36.70C.020(2). There is agreement that the May

2000 decision of Spokane County was a “land use decision”. In any event approval and disapproval of short plats is contemplated for review under LUPA. Chelan County v. Nykriem, 105 Wash.App. 339, 426, 20 P.3d 416 (2002). A “Short plat” is the map or representation of a short subdivision. RCW 36.70C.020(8). Despite the Respondents arguments to the contrary a “short plat” is a “map” and therefore they are same. The attempt by the Respondents to disengage the “Final Short Plat Map” from the Spokane County “land use decision” in May of 2000 is not only disingenuous but also legal error. The Final Short Plat does not contain Respondents easements and separating the Final Short Plat from the May 2000 “land use decision” allows them to argue that they were not required to appeal the Final Short Plat because it was not a “land use decision”. The “land use decision” made by Spokane County in May of 2000 main purpose was to outline the criteria for the “Final Short Plat”. See “Conditions of Approval”, CP 364-372. The Final Short Plat was not just some extraneous and irrelevant document unattached to the “land use decision” made in May of 2000.

This is also why the May 24, 2013 Summary Judgment decision of the trial court is important. The trial court ruled, and no party has appealed that decision, that the Final Short Plat “map” from 2002 is a “land use decision” and is governed by LUPA and no party appealed the decision

within LUPA's 21 day Statute of Limitations. CP 258-263. The Final Short Plat "map" from 2002 was and continues to be an integral part, and not an extraneous member, of the body of the "land use decision" approved in May of 2000.

As we noted above there appears to be a conflict between the common law regarding the extinguishment of private easements and LUPA. If there is a "land use decision" and a party desires to have a court review the contents of that "land use decision" then an appeal must ensue within 21 days of the "land use decision". The "land use decision", in this case, included a "Final Short Plat" that excluded the pre-existing easements of some of the Respondents and the trial court ordered that LUPA was inapplicable in spite of the LUPA's plain and unambiguous language that it was the exclusive means of reviewing the contents of a "land use decision". Our Supreme Court has also stated that in construing the applicability of LUPA that if a statute is plain and unambiguous, it must be construed in conformity to its obvious meaning *without regard to the previous state of the common law*. Chelan County v. Nykriem, at P. 931. It has been determined by our Supreme Court that LUPA is plain and unambiguous as to its applicability and "all land use decisions are subject to LUPA unless specifically excluded under RCW 36.70C.030". There is no exceptions listed in RCW 36.70C.030 for "privately granted

easements” and Respondents have not cited the court to any such exceptions. Further still, with such a clear pronouncement from the Supreme Court and the fact of a theoretical conflict, the common law on the subject of extinguishment of private easements must yield to LUPA and the common law is therefore abrogated just as occurred in State ex rel. Madden v. Pub. Util. Dist. No. 1 of Douglas County, 83 Wash.2d 219, 222, 517 P.2d 585 (1973). Infra.

#### TERMS OF APPROVAL

RCW 58.17.170(3)(b) provides that “A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval..” In spite of this statutory requirement the trial court determined that Short Plat 1227-00 is governed by the common law cases on privately granted easements. Short Plat 1227-00 does not include easements other than a depicted 40 foot wide utility and ingress and egress easement. The trial court order allows easements not a part of the final plat to govern the use of the Short Plat. As such, the trial court has committed error and should be reversed.

## ROADS NOT DEDICATED TO THE PUBLIC

The Respondents have argued that RCW 58.17.165 which states that “Roads not dedicated to the public must be clearly marked on the face of the plat.”, only applies to “dedications”. But a “dedication” by definition is only to the “public”. (“Dedication” is the deliberate appropriation of land by an owner for any general and public uses,…” RCW 58.17.020(3)). RCW 58.17.165 by its own terms excepts from its coverage “roads not dedicated to the public” and declares that they are required to be clearly marked on the face of the plat. A “road not dedicated to the public” is therefore a “private easement”.

The Respondents also claim that there is no consequence to this statutory mandate. But there is a consequence. In conjunction with LUPA RCW 58.17.165 requiring “private easements” to be depicted on the face of the plat works to foreclose the ability to place the private easements on the Short Plat beyond LUPA’s 21 Statute of Limitations.

## CONSTITUTIONALITY OF LUPA

The Respondents also argue that if LUPA indeed prevails over common law then LUPA, as a whole, is unconstitutional. A statute is presumed to be constitutional and the party challenging the statute has the burden of proving the statute is unconstitutional beyond a reasonable

doubt. Habitat Watch v. Skagit County, 155 Wn. 2d 397, 414, 120 P. 3d 56 (2005). The unconstitutional claim is fundamentally a “takings” claim and for a “takings” claim to survive the party claiming an unconstitutional taking must exhaust their administrative remedies. Sintra v. City of Seattle, 119 Wn. 2d 1, 18, 829 P. 2d 765 (1992). None of the Respondents appealed the “land use decision” from May of 2000 or 2002 and therefore none of the Respondents can meet the prerequisite of exhaustion of administrative remedies. Further, failure to exhaust administrative remedies deprives the parties of all standing under LUPA. Durland v. San Juan County, 182 Wn. 3d 55, 67, 340 P. 3d 191 (2014).

LUPA also provided the Respondents with an avenue for challenging the constitutionality of the land use decision from May of 2000 and 2002. (“The land use decision violates the constitutional rights of the party seeking relief.” RCW 36.70C.130(1)(f)). Again, no Respondent made this claim of unconstitutionality nearly 15 years ago before the LUPA Statute of Limitations ran.

#### EASEMENTS ADDED TO SHORT PLAT AFTER ITS CREATION

The Margitans (and Inland Power) claim that private easements may be placed on an approved short plat after its creation without any restrictions as to nature of easement and number of easements. Margitan

*Brief, P. 12.* They argue that, in this case, the addition of private easements to a short plat is not an alteration of the short plat. *Id.* The Margitans make this statement in spite of the fact that before the addition of the private easements there was depicted on the short only a 40 feet easement and after the addition of the Margitan's (and Inland Power) easements there are three easements. This is by definition an alteration to the short plat. ("Alteration" the act, process, or result of changing or altering something. *Merriam-Webster Dictionary*)

"Under RCW 58.17.060, local governments are required to "adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions or *alteration or vacation thereof*." *M.K.K.I., Inc. v. Krueger*, 135 Wash.App. 647, 654, 145 P.3d 411 (2006). In most circumstances, after a short plat is finalized, the short plat cannot be amended except by following the procedures set forth in the local adopted regulations. *Id.* The only issue raised by the Respondents is whether the addition of an easement after the creation of a short plat is an "alteration" of Final Short Plat 1227-00.

In *McPhaden v. Scott*, 95 Wash.App. 431, 975 P.2d 1033 (1999) the original plat map filed by Lake Haven Development Company did not show an easement. Rather, a surveyor recorded a separate document one year later in an apparent attempt to amend or alter the original plat map.

But according to the *McPhaden* court this was not sufficient to alter the original plat map. Former RCW 58.16.020 required each plat, subdivision or dedication to be submitted for approval to the legislative planning authority before the property could be sold or offered for sale. And former RCW 58.16.060 provided that “[u]pon compliance with the provisions of 58.08.030 and 58.08.040 the plat, subdivision, or dedication shall be eligible for filing ... and thenceforth it shall be known as an authorized plat, subdivision or dedication of the land.” Former RCW 58.16.060. The *McPhaden* court said: As these requirements were not met, the mere filing of the “easement” map did not alter or amend the original plat map.

*McPhaden* remains good law. The *Krueger* court also said, interpreting

*McPhaden*:

“In *McPhaden*, the original plat map did not show an easement. One year later, a surveyor recorded a separate document in an attempt to amend the plat map. The court determined that the filing of this document did not comply with statutory requirements and did not create an easement or amend the original plat map.” *M.K.K.I at P. 658*.

The argument of Respondents that private easements may be added, without restriction, to a final short plat, over Riparian Zones, across wetlands, over septic drain fields and without notice or approval of local land use authorities, flies in the face of RCW 58.17 and idea of land use “planning” itself.

THE MARGITANS EASEMENT DOCUMENTS DO NOT MANIFEST  
AN INTENT TO CONVEY AN EASEMENT

As we noted in our initial brief, the Margitans easement documents are not easements at all since they do not manifest an intent to convey an “present” interest. We cited Zunino v. Rajewski, 140 Wash.App. 215, 165 P.3d 57 (2007). (“This case addresses the fundamental issue of what is necessary to create an easement. We hold that the documents here designated as “private road and utility easements” simply do not create easements because they lack the required statement of intent to transfer property.”) As we demonstrated in our initial brief the easement documents in our case and the easement documents in Zunino are identical. Therefore, this court is obliged to make the same pronouncement as in Zunino: “These documents failed to convey an easement because the words do not demonstrate a present intent to grant or reserve an easement.” Id at P. 222. The Margitans have missed the point of Zunino entirely. Zunino was addressing whether there was a “present” intent to convey an easement when the documents actually reference an easement that “*was created*”, at some point in the past. Id. Take note of the Margitans’ easement documents that state: “Whereas this easement was created as a medium of ingress and egress for the benefit of...”

### UNAUTHORIZED STRUCTURES ON PARCEL 3

The Margitans concede that they desire to use and occupy structures outside of the “Building Site” corridor in Short Plat 1227-00. They claim they are exempt from the restrictions imposed by the Final Short Plat for three reasons. First, they contend that structures are “grandfathered” into the Final Short Plat, second, they argue that the Hannas have not incurred any damages and, third, the Hannas have no authority to enforce a restriction depicted on the face of the Short Plat.

A “grandfather clause” is “[a] statutory or regulatory clause that exempts a class of persons or transactions because of circumstances existing before the new rule or regulation takes effect.” BLACK'S LAW DICTIONARY, 706 (7th ed.1999). *Bellevue Farm Owners Ass'n v. State of Washington Shorelines Hearings Bd.*, 100 Wash.App. 341, 345, 997 P.2d 380 (2000). The only mention of the residence on the Margitans' property in the “land use decision” approving the Short Plat is a “Finding of Fact”: “The site is currently undeveloped with the exception of the existing residence, boathouse and dock.” *CP 364-372*. There is no indication that the Short Plat approval was designed to “grandfather” the existing residence, boathouse or dock into the Final Short Plat or that the

above phrase act as a “grandfather clause”, especially since the residence was not incorporated into the Final Short Plat from March of 2002.

As to the failure of the Hannas to claim damages, a restrictive covenant in a plat may be enforce alone without the requirement of a damages claim. Hollis v. Garwall, 137 Wash.2d 683, 974 P.2d 836 (1999).

Lastly, as the court said in Save Sea Lawn Ass’n v. Mercer, 150 Wash. App. 411, 166 P. 3d 770, 775 (2007): “The owners in Plat 1 have the authority to enforce the restrictive covenant within their own plat, they do not have a clear legal or equitable right to enforce the restrictions in Plat 2.” The Hannas therefore have the right to enforce the restrictive covenant appearing on the face of the plat, limiting building to the “Building Site” area and outside of the Riparian Buffer Area.

#### AVISTA’S CLAIMS

Avista misapprehends the claims of the Hannas. True, RCW 58.17.165 is but one basis on which the Hannas claim that Avista’s easements have been extinguished. But with reference to Avista, RCW 58.17.165 is inapplicable because Avista’s water storage and overflow easements are not “roads” and per RCW 58.17.165 only “all roads not dedicated to the public must be shown on the face of the plat”.

Despite Avista's claims that its water storage and overflow easements have not been extinguished, Avista points to not a single statute or case which gives it special immunity from the strictures of LUPA's Statute of Limitations. The arguments the Hannas have made with respect to the Respondents' failure to appeal the "land use decision" in May of 2000 are equally applicable to the Avista's recorded easements.

Some of the Respondents, including Avista, have cited two cases for the proposition that a subdivision does not extinguish a pre-existing easements: Schwab v. City of Seattle, 64 Wash. App. 742, 746, 826 P. 2d 10898 (1992) and Kirk v. Tomulty, 66 Wash. App. 231, 238-239 (1992). Both cases are pre-LUPA cases. As such, they do not address how LUPA abrogates the common law with respect to the termination of easements not included in a "land use decision". Additionally, both cases address only how a subdivision may or may not terminate an easement but do not detail how an easement not included in a "land use decision" takes away the jurisdiction of the trial court to decide whether an easement is or is not included in a short plat when no party has not appealed the "land use decision" under LUPA.

In particular, Schwab is distinguishable from the current case. The trial court entered findings and conclusions that the subdivision of the Andrews property did not extinguish the easement in question. Schwab at

P. 746. There is no indication whether the subdivision map showed the easement and the Court of Appeals did not address this issue in its decision speaking only about Lots 2 and 3 and not about Lot 1, which contained the easement in dispute. And as we indicated above the Schwab decision was pre-LUPA and on the face of it wrestled only with RCW 58.17.

In the Tomulty decision the short plat map included the disputed easement. Tomulty at P. 240. The only question there was how far the easement extended and the court decided that issue based on the intention of the parties.

Avista raises an issue under RCW 58.17.218 which provides that alterations of subdivision is subject to RCW 64.04.175. RCW 64.04.175 further provides that easements established by “dedication” are property rights and cannot be extinguished without approval of the easement owner. First, no party seeks to alter the short plat, as they claim, and therefore RCW 58.17.218 is inapplicable. Second, there is no easement established by “dedication” shown on the plat which benefits Avista or any other party. “Dedication” is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself or herself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.

RCW 58.17.010(3). Avista raises RCW 58.17.218 and RCW 64.04.175 believing that these two statutes in combination stand for the proposition that in general easements cannot be extinguished without the approval of the easement owner. But, of course, there is no alteration sought of the Short Plat here and there is no public “dedication” included in the Short Plat for any party to these proceedings.

#### ATTORNEY FEES UNDER RCW 4.84.185

The trial court could not accept the Hannas’ argument that LUPA prevails under these facts with respect Respondents having easements recorded before the Short Plat was created. The Hannas’ argument is based on the clear statutory interpretation of LUPA. A lawsuit is “frivolous” when it cannot be supported by any rational argument on the law or facts. *Tiger Oil Corp. v. Dep't of Licensing*, 88 Wn.App. 925, 938, 946 P.2d 1235 (1997). A trial court's award under RCW 4.48.185 is reviewed for an abuse of discretion. *Id.*

The rational argument on the law and facts in this case is that LUPA is the “*exclusive* means of judicial review of land use decisions” and should be interpreted “according to its obvious meaning *without regard to previous common law*... all land use decisions are subject to LUPA unless specifically excluded under RCW 36.70C.030.” *Nykriem* at

P. 931. Factually, there is no disagreement among the parties that a “land use decision” creating Short Plat 1227-00 was made in May of 2000 and in March of 2002. In fact, the Court’s order of May of 2013 also states that Final Short Plat 1227-00 is a “land use decision” and was never appealed. There is some argument being made that the “land use decision” from May of 2000 is separable from the “Final Short Plat” but, of course, the entire point of the decision by Spokane County from May of 2000 was the creation and approval of the “Final Short Plat”. If you remove any reference to the “Final Short Plat” in the May 2000 decision it would lead to a ludicrous and ridiculous document. And all parties acknowledge that the “Final Short Plat” does not include any of the easements recorded before the creation of the Short Plat.

The Respondents entire argument against LUPA is based on the idea that the common law trumps LUPA but as we noted because LUPA is a clear statutory provision and it is interpreted according to its obvious meaning *without regard to previous common law*. The trial court abused its discretion when it ignored the May 2013 Court Order, un-appealed, that the Short Plat was governed by LUPA and ignored the plethora of case law decisions that provide where you have a clear statutory mandate that it abrogates the common law within the purview of the statute.

The trial court abused its discretion in awarding attorney fees under RCW 4.84.185 when it also found that the easements recorded after the Short Plat was created do not require an amendment to the Short Plat to be effective. “In most circumstances, after a short plat is finalized, the short plat cannot be amended except by following the procedures set forth in...” local ordinances. M.K.K.I., Inc. v. Krueger, 135 Wash.App. 647, 654, 145 P.3d 411 (2006). The Short Plat here did not contain ANY easements in favor of Inland Power or the Margitans as it was being created but were added later. Inland Power and the Margitans argued that the Krueger decision is only applicable to easements created per the short plat and also only applies to the extinguishment of those same easements. In other words, Inland Power and the Margitans argue that private easements may be added to a short plat at any time, in any number and in any place on the Short Plat (across Riparian Buffer Areas and Wetlands, for instance) without an amendment to the Short Plat, whereas removal of an easement requires an amendment of the Short Plat. According to the trial court’s award of attorney fees and its position, it would be irrational to require an amendment of a short plat to allow innumerable additional private easements. The idea of RCW 58.17 is to “regulate the subdivision of land”. RCW 58.17.010. But with the trial court’s order with the unfettered addition of easements to short plats without any amendment to

the short plat stands as the antithesis to “regulation” of subdivisions, without a stated exemption.

The Hannas further cited the trial court and this court to McPhaden v. Scott, 95 Wash.App. 431, 975 P.2d 1033 (1999) for the proposition that an easement cannot **added** to a short plat without the county’s permission.

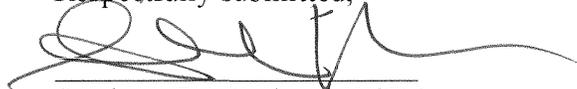
The Krueger. court said:

“In McPhaden, the original plat map did not show an easement. One year later, a surveyor recorded a separate document in an attempt to amend the plat map. The court determined that the filing of this document did not comply with statutory requirements and did not create an easement or amend the original plat map.” Krueger at P. 658.

We also rely on previous arguments made in the original brief and therefore an award of attorney fees under RCW 4.84.185 is not sustainable on any grounds.

Dated this 25 day of August 2015.

Respectfully submitted,



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#10922  
Attorney for Appellants



CERTIFICATE OF SERVICE

I, Stanley Perdue, under penalty of perjury under the laws of the State of Washington certify that on this 25<sup>th</sup> day of August, 2015 I served the foregoing Appellants' Reply Brief on the following attorneys via the method noted.

  
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