

FILED

No. 33982-3-III

JUN 11 2015

WASHINGTON COURT OF APPEALS, DIVISION III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

FRIENDS OF NORTH SPOKANE COUNTY PARKS,

Appellant-Plaintiff,

v.

SPOKANE COUNTY; FRED MEYER STORES, INC; and
STAR SAYLOR INVESTMENTS, LLC,

Respondents-Defendants.

REPLY BRIEF OF APPELLANT

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I. REPLY ARGUMENT

The headings in quotations below correspond to the headings in the Brief of Respondent Star Saylor Investments, LLC (Star Saylor).

A. “The Trial Court Correctly Determined that the Statute of Limitations in RCW 36.32.330 Barred Friends’ Lawsuit.” Response at 10.

In its Opening Brief at 11, Friends said:

“Even if the statute [RCW 36.32.330] did apply, [Friends] would be unable to avail himself of it, as the court early held that an appeal under this statute could be prosecuted only by one who was a party to the proceedings before the Board.” *Sterling v. Spokane County*, 31 Wash. App. 467, 470 n.3, 642 P.2d 1255 (1982).

Star Saylor, in page after page, argues that this rule does not apply and, in doing so, does not admit the existence of the rule. Response 10-17.

In *Sterling v. Spokane County*, *supra*, at page 470 footnote 3, the court cited a number of cases substantiating rule stated. The cases go back to 1895 and they all relate RCW 36.32.330 or previous versions thereof.

[Footnote] 3 Even if the statute did apply, Wolff would be unable to avail himself of it, as the court early held that an appeal under this statute could be prosecuted only by one who was a party to the proceedings before the Board. *Morath v. Gorham & Clemans*, 11 Wash. 577, 40 P. 129 (1895); *see also Ocosta Consol. Sch. Dist. 123 v. Grays Harbor County*, 44 Wash. 2d 525, 268 P.2d 663 (1954); *State ex rel. Mason v. Board of County Comm’rs*, 146 Wash. 449, 263 P. 735 (1928), overruled on other grounds in *Lopp v. Peninsula Sch. Dist.* 401, 90 Wash. 2d 754, 758, 585 P.2d 801 (1978);

Lawry v. Board of Comm'rs, supra. [12 Wash. 446 (Wash. 1895)].

Each of these cases address a previous version of RCW 36.32.330.¹

These historical versions of RCW 36.32.330 are included in Appendix A.

None of the cases have been overruled.

RCW 36.32.330 does not apply to *Friends*. *Friends* was not a party to the proceeding. No “decision or order” was made as to *Friends* as a party to proceedings contemplated by RCW 36.32.330.

B. “The Court Should Affirm the Denial of Friends' Motion for Reconsideration as Friends Fails to Challenge any of the Trial Court's Findings of Fact and, in any Case, No Waiver of Statute of Limitations Defense Has Occurred.” Response at 17.

Regarding the waiver issue and CR 12(h), Star Saylor hopes to profit from certain findings of fact which it says *Friends* did not challenge. There are two points to be made about this effort on Star Saylor’s part. First, findings of fact in summary judgment decisions under CR 12 or CR 56 do not require findings of fact. CR 52(a)(5) provides that “findings of fact and conclusions of law are not necessary” regarding “decisions of motions under

¹ The legislative history of RCW 36.32.330 is reported to be as follows: “History – [2009 c 549 § 4068; 1963 c 4 § 36.32.330. Prior: 1957 c 224 § 5; 1893 c 121 § 1; Code 1881 § 2695; 1869 p 308 § 29; 1867 p 57 § 29; 1863 p 545 § 30; 1854 p 423 § 24; RRS § 4076. Cf. 1879 p 143 §§ 1, 2.” Copies of the law over time are included in the Appendix.

rules 12 or 56 or any other motion, except as provided in rules 41(b)(3) and 55(b)(2).”

Trial courts need not enter findings of fact and conclusions of law when granting summary judgment. CR 56; *Westberry v. Interstate Distrib. Co.*, 164 Wash. App. 196, 263 P.3d 1251, 1257 (2011), *review denied*, 174 Wash. 2d 1013, (2012). The court said:

Last, Westberry argues that the trial court erred by not entering its own findings of fact or conclusions of law. But a trial court is not required to enter findings of fact or conclusions of law when granting summary judgment under CR 56. *See, e.g., Donald v. City of Vancouver*, 43 Wash. App. 880, 883, 719 P.2d 966 (1986) (“Findings of fact . . . are not necessary on summary judgment . . . and, if made, are superfluous and will not be considered by the appellate court.”). Westberry's argument fails.

Larry Westberry v. Interstate Distrib. Co., 263 P.3d at 1257 (emphasis added).

Second, Star Saylor is not being truthful about two of the court's findings of fact. In its Response at 19, Star Saylor says:

The undisputed evidence establishes that SSI first appeared in the Trial / Court on April 24, 2013 and filed a CR 12(b)(6) Motion to Dismiss on April 25, 2013, specifically citing RCW 36.32.330 and arguing the statute of limitations barred Friends' lawsuit. (CP 69). Thereafter, Friends filed an amended complaint to which both the County and Fred Meyer answered and affirmatively asserted that Friends' suit was barred as untimely. *Id.* SSI then filed a second motion to dismiss under CR 12(b)(6) arguing that the complaint failed

to state a claim upon which relief could be granted.

Previously in their Response Star Saylor said at page 9:

In denying Friends' motion for reconsideration, the Trial Court Order, the proposed order of Star Saylor, made the following unchallenged findings of fact:

2. SSI filed a CR 12(b)(6) Motion to Dismiss on April 25, 2013, arguing in part that the statute of limitations under RCW 36.32.322 (sic) banned Friends' lawsuit . . .

4. Defendants Spokane County and Fred Meyer Stores, Inc. answered Friends' Amended Complaint on May 13, 2013 and June 5, 2013, respectively, and both Defendants raised an affirmative defense that the Amended Complaint was barred as untimely . . .

6. Friends was on notice that Defendants intended to assert the statute of limitations as a defense.

7. On August 21 , 2015, SSI filed a Motion for Summary Judgment asserting, in part, that dismissal of Friends' Amended Complaint was appropriate based on the expiration of the statute of limitations under RCW 36.32.322. [sic]

It is false that "2. SSI filed a CR 12(b)(6) Motion to Dismiss on April 25, 2013, arguing in part that the statute of limitations under RCW 36.32.322 (sic) banned Friends' lawsuit . . ." Appendix 21.

It is also false that "4. Defendants Spokane County and Fred Meyer Stores, Inc. answered Friends' Amended Complaint on May 13, 2013 and June 5, 2013, respectively, and both Defendants raised an affirmative

defense that the Amended Complaint was barred as untimely

Appendix 251.

C. “Alternatively, the Court Should Grant SSI's Motion for Summary Judgment and Dismiss This Case as Neither the Original or Amended Dedication Limits the County's Ability to Extend Standard Drive for Road Access through Freddy Park.” Response at 22.

In this part of Star Saylor’s Response, it asks the court to consider rendering summary judgment. It says this can be done because a court can affirm a trial court’s motion on any basis supported by the records. Response at 22. Cases are cited. This case is a summary judgment, but it was based upon CR 12(b)(6).

This court reviews a motion for summary judgment de novo, construing all facts and reasonable inferences from those facts in the light most favorable to the nonmoving party. This court may affirm summary judgment on any grounds supported by the record. [Footnotes omitted.]

Blue Diamond Grp., Inc. v. KB Seattle 1, Inc., 163 Wash. App. 449, 266 P.3d 881 (2012). This rule does not apply so as to turn a motion considered by the court into another comprehensive motion which was not considered.

Star Saylor is really asking the court to step back and take over the work of the trial court. The Court of Appeals is a court of appeals; it does not have constitution or Washington code jurisdiction to become a trial court for an afternoon and become a trier of fact in the context of a

summary judgment motion (renewed before the Court of Appeals.) Wash. Const. Art. IV, Section 30. “(3) Review of Superior Court. Superior court actions may be reviewed by the court of appeals or by the supreme court as provided by statute or by rule authorized by statute.”

RCW 2.06.030 provides:

Subject to the provisions of this section, the court shall have exclusive appellate jurisdiction in all cases except:

(a) cases of quo warranto, prohibition, injunction or mandamus directed to state officials;

(b) criminal cases where the death penalty has been decreed;

(c) cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;

(d) cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination; and

(e) cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decisions of the supreme court;

all of which shall be appealed directly to the supreme court:

PROVIDED, That whenever a majority of the court before which an appeal is pending, but before a hearing thereon, is in doubt as to whether such appeal is within the categories set forth in subsection (d) or (e) of this section, the cause shall be certified to the supreme court for such determination.

The foregoing notwithstanding, Friends, in response to Star Saylor's motion that the court now decide the case on summary judgment, sets forth the following argument in favor of summary judgment for Friends.

Note, the court has considered many of the issues involving the park property in its previous decision. *Friends of N. Spokane Cnty. Parks v. Spokane Cnty.*, 184 Wash. App. 105, 336 P.3d 632 (2014).

1. Statement of Facts.

Prior to July 24, 2001, Roundup Company, in connection with the property being developed for a Fred Meyer store near the corner of US Highway 395 and Hastings Rd., approached Spokane County with its desire of donating a 3.99 acre parcel of property to the County to be used only as a "County – owned and operated natural or community Park." CP 451.

Spokane County, by Resolution Number 1-0660, accepted the donation on July 24, 2001. *Id.* Spokane County specifically agreed to accept the property for park purposes as originally set forth in the Deed and as originally understood under Resolution 1-0660, adopted July 24, 2001; that is, for "a natural, community or regional park." CP 451 -55.

Freddy Park was created on August 13, 2001 when Wilmington Trust conveyed undeveloped land adjacent to a Fred Meyer Store at the

intersection of US Highway 395 and Hastings Road to Spokane County for use as a park and with further restrictions that there be no roads through the park, and the county accepted the donation with the restriction. CP 457, 460. The Spokane County Assessor assigned Parcel Number 36082.91612 to Freddy Park referred to in the Assessor's Scout GIS map as "Freddies' Natural Area."

The Deed, imposed "Restrictions on Use and Development of the Property." Exhibit B provides:

Exhibit B
Restrictions on Use and Development of Property

The herein described real property shall be held, conveyed, sold, and improved only as a natural, community, or regional park. This condition and restriction of use shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon Grantee, its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by Grantor, Parcels A: and G of BSP-58-97. Vehicular access to the property shall be only from Standard Drive.

A pedestrian walkway to Parcel G maybe allowed subject to Grantor's review and approval of the location; design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of

Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor.

CP 467.

The county specifically accepted the property for park purposes as originally set forth in the Deed under Resolution 1-0660 adopted July 24, 2001. CP 457. On behalf of the county, County Commissioner Phillip Harris, acting for the county under the resolution, accepted the Deed with Covenants transferring the park to the county. CP 459.

Freddy Park is bordered on its southerly property line by property owned by Star Saylor Investments LLC. Star Saylor Investments LLC, the developer of property contiguous to and south of the park property (Parcel Number 360825.9002), wants to have Spokane County allow them to build and have roadway through the park property from Standard Drive to the Star Saylor property adjacent to the Freddy Park southerly property line, which will connect with Regina, which comes to the Star Saylor property from the west.

On November 7, 2012, Spokane County adopted Resolution 12-0910 which authorized the County to sign a document entitled "Amendment to Restrictions on Use and Development of Property" pursuant to which Fred Meyer Parties and Spokane County will amend Exhibit B to the documents

entitled "Deed with Covenant and Joinder with Warranties and Title to Real Property" as recorded in the records of the Spokane County Auditor on August 22, 2001 under Recording Number 4624178, to provide as follows:

The herein described real property described shall be held, conveyed, sold, and improved as a natural, community, or regional park and for the establishment of a public road as depicted in the attached Exhibit "C". This condition and restriction of uses shall constitute a covenant and encumbrance which shall run with the land and shall be perpetually binding upon the Grantee, its successors-in-interest and assigns and all parties having or acquiring any right title, or interest in, or to, any part of the subject property.

There shall be no vehicular ingress or egress from the property to the adjacent property owned by the Grantor, Parcels A and G of BSP-58-97.

A pedestrian walkway to Parcel G may be allowed subject to Grantor's review and approval of the location, design, and construction of the walkway.

Grantee shall install and maintain a fence within the boundaries of the property along the adjacent boundaries of Parcels A and G. The design, materials and height of the fence shall be subject to approval by Grantor."

CP 474, 477.

The grantor of the 2001 Deed, Wilmington Trust Company, retained no interest in the property as a result of the transfer. The entire interest in the property was conveyed to Spokane County for a dedicated park.

The deed provides:

The Grantor, WILMINGTON TRUST COMPANY, a Delaware corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1 a Delaware business trust, for and consideration . . . in hand paid, bargains, sells and conveys to SPOKANE COUNTY. . . Grantee, the real property described on the attached Exhibit A, TOGETHER WITH all the tenements, hereditaments and appurtenances belonging thereto, and the reversion, and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right and title to the property whether in law or in equity, and subject to the Restrictions on Use and Development of Property as stated in Exhibit B, and the encumbrances shown on Exhibit C. [Emphasis added.]

CP 458.

Fred Meyer Stores, Inc. was not the grantor under the original Deed, nor was it the grantee of any interest in the Freddy Park property.

Spokane County and Fred Meyer Stores, Inc. signed a document entitled "Amendment to Restrictions on Use and Development of Property" dated November 19, 2012. County records fail to show that any of Fred Meyer Parties were owners of the property in question and thus could not be a grantor. The deed was not signed by Wilmington Trust, the grantor of the deed dated August 13, 2001. CP 474. Wilmington Trust, the grantor of the deed dated August 13, 2001 did not reserve any rights to the property. *Id.* Fred Meyer Parties cannot have an interest in the property simply because Wilmington Trust did not retain any interest in the property.

On April 2, 2013, a document entitled Amendment to Restrictions on Use and Development of Property was filed with the Spokane County Auditor under receiving number 6193631. CP 495-516. The document was signed by Fred Meyer Stores, Inc. It was not signed by Wilmington Trust. *Id.* As stated above, Wilmington Trust, the grantor of the deed dated August 13, 2001 did not reserve any rights to the property. County Resolution 12-0910 (Second Whereas); CP 470.

2. *Nevertheless, a Road Through This Park is Not a Proper Park Use.*

Looking at the issue from another perspective, whether a county in the instance of a dedicated park such as Freddy Park, has the power to run a road through the park. The dedication provided that the property "shall be held, conveyed, sold, and improved only as a natural, community, or regional park." This park is in an area where there are no parks. The road proposed to be provided to Star Saylor would take up a substantial and significant portion of the area of the park. From this perspective, a road through this park would not be a proper park use. It would impose so much on the park that the area of the park would be substantially diminished.

Further, the park is to be a natural park. A road through the park is hardly a natural area use, nor is the proposed road in any way a benefit to

the natural area; instead it would be a significant detraction from the natural area.

3. *Contract Rezone Aspects of the Wilmington Trust Development.*

The Wilmington Trust shopping center development at the corner of US 395 and Hastings Road was part of a rezoning and development of the area. The land use action included an understanding that the developer would contribute property to the county as a dedicated natural area community regional park. Contract rezones have been approved in the state of Washington. Indeed, the first Washington case approving a contract rezone was a case involving the Manito Shopping Center on the South Hill of the City of Spokane. *State ex Rel. Myhre v. Spokane*, 70 Wash. 2d 207, 216-17, 422 P.2d 790 (1967) (Manito Shopping Center, Spokane, Washington, contract rezone permitted).

4. *County Commissioner Effort to Amend the 2001 Deed Would Violate the Conditions Under Which the County Accepted the Dedication.*

The deed cannot be amended because the county commissioners previously accepted the property subject the dedication elements.

Not only may lands be dedicated for a specific purpose, but one dedicating land to the public may impose reasonable conditions and restrictions, or make reservations, if not repugnant to or inconsistent with the uses and purposes for

which the property was dedicated. To state this principle another way, "[t] **there is no reason why a dedicator may not qualify his dedication and if the dedication is excepted, the public takes it subject to the uses reserved.**" (Footnotes omitted) (emphasis added).

11A MCQUILLAN, MUNICIPAL CORPORATIONS § 33.10 at page 319 (3d ed. 1991)

There is no question that the county commissioners specifically accepted Freddy Park with its dedication and the specific dedication that vehicular access be only at Standard Drive. There can be no rejection of the dedication. It is axiomatic that a "donee, by acceptance, agrees to the conditions or restrictions." *Id.*

5. *The Deed of 2013 is Ineffective to Amend the 2001 Deed Because the Grantors of the 2001 Deed Had no Further Interest of Any Kind in the Property.*

As stated previously, the Fred Meyer parties cannot revoke the access restriction nor can they amend the 2001 deed. The Fred Meyer parties have no interest in the property. Further, the 2001 deed clearly established (1) that Wilmington Trust was the grantor of the 2001 deed and (2) that as the grantor it conveyed all of its interest in the property specifically indicating that any rights to reversion also went with the deed to the grantee. Again, 2001 Deed provided:

The Grantor, WILMINGTON TRUST COMPANY, a Delaware corporation, not in its individual capacity, but solely as Owner Trustee under the FMS Trust 1997-1 a Delaware

business trust, for and consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, in hand paid, bargains, sells and conveys to SPOKANE COUNTY, whose address is 1116 W. Broadway, County Courthouse, 1st Floor, Spokane, WA 99260-0100, Grantee, the real property described on the attached Exhibit A, TOGETHER WITH all the tenements, hereditaments and appurtenances belonging thereto, and the reversion, and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right and title to the property whether in law or in equity, and subject to the Restrictions on Use and Development of Property as stated in Exhibit B, and the encumbrances shown on Exhibit C. [Emphasis added.]

CP 458.

6. *The Court Cannot Look to Parol Evidence to Affect the 2001 Deed.*

Fred Meyer Stores, Inc. has no interest in the property of Freddy Park. When the property was deeded to Spokane County, the Grantor gave up, transferred, all and any rights it had, including remainder and reversionary interests, in the property. See the quotation from the 2001 Deed, in the immediately preceding part. CP 530.

The records of the Spokane County Auditor show that there was no conveyance before or after the Freddy Park Deed. CP 592. Wilmington Trust Company completely divested itself from any interest it had in Freddy Park, and that such divestment operated at the time and as to any interest which might come about in future. "A court may consider extrinsic

evidence to ascertain the parties' intent, but unilateral or subjective purposes and intentions about the meanings of what is written do not constitute evidence of the parties' intentions." *Exterra, LLC v. Cle Elum Gateway Property, LLC*, 184 Wash. App. 1040 (2014) citing *Lynott v. Nat'l Union Fire Ins. Co.*, 123 Wash. 2d 678, 684, 871 P.2d 146 (1994); *Wm. Dickson Co. v. Pierce County*, 128 Wash. App. 488, 493, 116 P.3d 409 (2005). The intent of the 2001 Deed is abundantly clear.

7. Spokane County Cannot Negate a Dedication.

Spokane County Cannot Negate a Dedication. By the same token, the county cannot enter into the amendment because doing so would violate the law of Washington. The amendment is not effective from this standpoint, from the standpoint of the authority of the county.

The law has long understood that public authorities may not take any action with respect to the dedicated property that interferes with the use for which the property was dedicated. *Gillis v. King County*, 42 Wash. 2d 373, 380, 255 P.2d 546 (1953) (holding that a local government holds dedicated property in trust for the public, so has no authority to act in conflict with that trust).

A county holds an easement in such streets in trust for the public. *Cunningham v. Weedin*, 81 Wash. 96, 142 P. 453 (1914). Public officials

have no authority to grant a permit which is in conflict with that easement.

Mueller v. Seattle, 167 Wash. 67, 8 P.2d 994 (1932).

In *Donald v. City of Vancouver*, 43 Wash. App. 880, 886, 719 P.2d 966 (1986) ruled that any diversion from the dedicated purpose is illegal. The

Donald court said:

First, if parkland is subject to a dedication, as Donald correctly points out, any diversion from the dedicated purpose is illegal.

It is doubtless the law that, where a person dedicates or donates to a city a tract of land, with a restriction upon its use — as for instance, where it is so dedicated or donated solely for a park or a public street — the city can not legally divert the use of such property to uses and purposes inconsistent with the purpose of such grant . . .

Id.

A dedication once completed, is, in its nature, irrevocable. 23 Am. Jur. 2d § 60 at 52 (1983).

II. CONCLUSION

RCW 32.36.330 is not a bar to Friends' action. The trial court must be reversed.

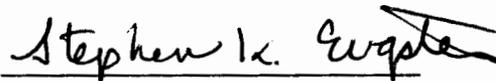
Star Saylor's motion to for summary judgment should be denied. Friends' cross motion for summary judgment should be granted. Spokane County accepted the deed of dedication creating Freddy Park. One of the

restrictions in the deed was that the only access to the park could only be Standard Drive at the northeast corner of the park. This restriction has not been changed, even it could be changed. County efforts to change the deed to remove this restriction are illegal and ineffective. Further, the park in any case cannot be subjected to a road which runs through the park that is not a permitted use in this park, Freddy Park. A road would conflict with the true purpose of Freddy Park.

June 14, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on the date below I served the Opening Brief of Appellants and its Appendix on attorneys of the parties as follows:

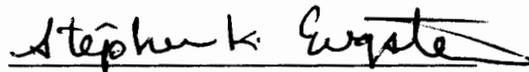
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APPENDIX

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duties of his or her office, and not approve, audit, or order paid any illegal, unwarranted, or unjust claim against the county for personal services.

Sec. 4065. RCW 36.32.100 and 1963 c 4 s 36.32.100 are each amended to read as follows:

The board of county commissioners at their first session after the general election shall elect one of its number to preside at its meetings. He or she shall sign all documents requiring the signature of the board, and his or her signature as ~~((chairman))~~ chair of the board shall be as legal and binding as if all members had affixed their names. In case the ~~((chairman))~~ chair is absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present.

Sec. 4066. RCW 36.32.135 and 1963 c 4 s 36.32.135 are each amended to read as follows:

The county commissioners of each county shall have and use a seal for the purpose of sealing their proceedings, and copies of the same when signed and sealed by the said county commissioners, and attested by their clerk, shall be admitted as evidence of such proceedings in the trial of any cause in any court in this state; and until such seal shall be provided, the private seal of the ~~((chairman))~~ chair of such board of county commissioners shall be adopted as a seal.

Sec. 4067. RCW 36.32.310 and 1963 c 4 s 36.32.310 are each amended to read as follows:

Whenever a member of the board of county commissioners of any county has a claim for compensation for per diem and expenses for attendance upon any special session of the board or a claim for compensation for extra services or expenses incurred as such commissioners, including services performed as road commissioner, the claim shall be verified by him or her and after being approved by a majority of the board of county commissioners of the county shall be filed with the clerk of the superior court and be approved by a judge of the superior court of such county or any superior court judge holding court in such county. The judge may make such investigation as he or she deems necessary to determine the correctness of the claim and may, after such investigation, approve or reject any part of such claim. If the judge so approve the claim or any part thereof the same shall be certified by the clerk under the seal of his or her office and be returned to the county auditor who shall draw a warrant therefor. The court shall not be required oftener than once in each month to pass upon such claims and it may fix a time in each month by general order filed with the clerk of the board of county commissioners on or before which such claims must be filed with the clerk of the court.

Sec. 4068. RCW 36.32.330 and 1963 c 4 s 36.32.330 are each amended to read as follows:

Any person may appeal to the superior court from any decision or order of the board of county commissioners. Such appeal shall be taken within twenty days after the decision or order, and the appellant shall within that time serve notice of appeal on the county commissioners. The notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the county auditor. The appellant shall, within ten days after service of the notice of appeal give a bond to the county with one or more sureties, to be

approved by the county auditor, conditioned for the payment of all costs which shall be adjudged against him or her on such appeal in the superior court. The practice regulating appeals from and writs of certiorari to justice's courts shall, insofar as applicable, govern in matters of appeal from a decision or order of the board of county commissioners.

Nothing herein contained shall be construed to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction after the same has been presented to and filed as provided by law and disallowed in whole or in part by the board of county commissioners of the proper county. Such action must, however, be commenced within the time limitation provided in RCW 36.45.030.

Sec. 4069. RCW 36.33.070 and 1963 c 4 s 36.33.070 are each amended to read as follows:

Whenever the county treasurer deems it expedient and for the best interests of the county he or she may invest any moneys in the county current expense fund in outstanding warrants on the county tax refund fund in the following manner: When he or she has determined the amount of moneys in the county current expense fund available for investment, he or she shall call, in the order of their issuance, a sufficient number of warrants drawn on the county tax refund fund as nearly as possible equaling in amount but not exceeding the moneys to be invested, and upon presentation and surrender thereof he or she shall pay to the holders of such warrants the face amount thereof and the accrued interest thereon out of moneys in the county current expense fund.

Sec. 4070. RCW 36.33.080 and 1963 c 4 s 36.33.080 are each amended to read as follows:

Upon receipt of any such warrant on the tax refund fund the county treasurer shall enter the principal amount thereof, and accrued interest thereon, as a suspense credit upon his or her records, and shall hold the warrant until it with interest, if any, is paid in due course out of the county tax refund fund, and upon such payment, the amount thereof shall be restored to the county current expense fund. The refund warrants held by the county treasurer shall continue to draw interest until the payment thereof out of the county tax refund fund, which interest accruing subsequent to acquisition of the warrants by the county treasurer shall be paid into the county current expense fund.

Sec. 4071. RCW 36.33.190 and 1963 c 4 s 36.33.190 are each amended to read as follows:

The county treasurer shall cash any United States bonds owned by the county as they mature or, with the approval of the state finance committee and of the county finance committee, he or she may at any time sell them. In either event he or she must return the proceeds into the treasury.

Sec. 4072. RCW 36.34.070 and 1963 c 4 s 36.34.070 are each amended to read as follows:

The board may advertise and sell used highway or other equipment belonging to the county or to any taxing division thereof subject to its jurisdiction in the manner prescribed for the sale of county property, or it may trade it in on the purchase of new equipment. If the board elects to trade in the used equipment it shall include in its call for bids on the new equipment a notice that the county has for sale or trade-in used equipment of a specified type and

claim. If the judge so approve the claim or any part thereof the same shall be certified by the clerk under the seal of his office and be returned to the county auditor who shall draw a warrant therefor. The court shall not be required oftener than once in each month to pass upon such claims and it may fix a time in each month by general order filed with the clerk of the board of county commissioners on or before which such claims must be filed with the clerk of the court.

36.32.320 ————**Compensation as road overseers in certain counties.** Each member of the board of county commissioners, in counties of the sixth, seventh, eighth and ninth classes, in addition to his duties as a member of the board of county commissioners and as ex officio road commissioner of the several road districts in his commissioner's district, shall oversee the construction and maintenance of all county and district roads and bridges in his commissioner district, and for time actually spent in the performance of such duties as overseer, he shall be entitled to compensation at the rate of ten dollars per diem: *Provided*, That as such compensation for overseeing the construction and maintenance of roads and bridges in his commissioner district he shall not receive more than one thousand two hundred dollars per year. All claims for such compensation must be approved by a majority of the board of county commissioners and the superior court as in other cases of extra compensation.

36.32.330 Appeals from board's action. Any person may appeal to the superior court from any decision or order of the board of county commissioners. Such appeal shall be taken within twenty days after the decision or order, and the appellant shall within that time serve notice of appeal on the county commissioners. The notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the county auditor. The appellant shall, within ten days after service of the notice of appeal give a bond to the county with one or more sureties, to be approved by the county auditor, conditioned for the payment of all costs which shall be adjudged against him on such appeal in the superior court. The practice regulating appeals from and writs of certiorari to justice's courts shall, insofar as applicable, govern in matters of appeal from a decision or order of the board of county commissioners.

Nothing herein contained shall be construed to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction after the same has been presented to and filed as provided by law and disallowed in whole or in part by the board of county

commissioners of the proper county. Such action must, however, be commenced within the time limitation provided in RCW 36.45.030.

36.32.335 Coordination of county administrative programs — Legislative declaration. The public necessity for the coordination of county administrative programs, especially in the fields of highways and social security, be and is hereby recognized.

36.32.340 ———Duties incident to. The county commissioners shall take such action as is necessary to effect coordination of their administrative programs, prepare reports annually on the operations of all departments under their jurisdiction, and submit biennially to the governor and the legislature their joint recommendations on procedural changes which would increase the efficiency of any department.

36.32.350 ———Coordinating agency—Agency reimbursement. County commissioners may designate the Washington State Association of County Commissioners as a coordinating agency in the execution of duties imposed by RCW 36.32.335 through 36.32.360 and reimburse the association from county current expense funds in the county commissioners' budget for the costs of any such services rendered: *Provided*, That the total of such reimbursements from any county in any calendar year shall not exceed a sum equal to the revenues of one-fiftieth of a mill levy against the assessed valuation of the county. Such reimbursement shall be paid on vouchers submitted to the county auditor and approved by the board of county commissioners in the manner provided for the disbursement of other current expense funds and the vouchers shall set forth the nature of the service rendered, supported by affidavit that the service has actually been performed.

36.32.360 ———Attendance at conventions authorized. County commissioners are hereby authorized to take such other and further action as may be deemed necessary to the compliance with the intent of RCW 36.32.335 through 36.32.360, including attendance at such state or district meetings as may be required to formulate the reports directed in RCW 36.32.340.

36.32.370 Land surveys. Except as otherwise provided in this title, the board of county commissioners, through a surveyor employed by it shall execute all surveys of land that may be required by the county. The certificate of the surveyor so employed of any survey made of lands within the county shall be presumptive evidence of the facts therein contained.

36.32.380 ———Record of surveys. Except as otherwise provided in this title, the board of county commissioners shall cause to be recorded in a suitable book all surveys except such as are

Other than first class cities—Damage claims—Presentation of claim—Verification—Report—Requisites of claim.

claimant is incapacitated from verifying and filing his claim for damages within said time limitation, or if the claimant is a minor, then the claim may be verified and presented on behalf of the claimant by any relative or attorney or agent representing the injured person.

No ordinance or resolution shall be passed allowing such claim or any part thereof, or appropriating any money or other property to pay or satisfy the same or any part thereof, until the claim has first been referred to the proper department or committee, nor until such department or committee has made its report to the council thereon pursuant to such reference.

All such claims for damages must accurately locate and describe the defect that caused the injury, reasonably describe the injury and state the time when it occurred, give the residence for six months last past of claimant, contain the items of damages claimed and be sworn to by the claimant or a relative, attorney or agent of the claimant.

No action shall be maintained against any such city or town for any claim for damages until the same has been presented to the council and sixty days have elapsed after such presentation.

RCW 36.32.330 amended.

Sec. 5. Section 1, chapter 121, Laws of 1893 and RCW 36.32.330 are each amended to read as follows:

County commissioners. Appeals from board's action.

Any person may appeal to the superior court from any decision or order of the board of county commissioners. Such appeal shall be taken within twenty days after the decision or order, and the appellant shall within that time serve notice of appeal on the county commissioners. The notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the county auditor. The appellant shall, within ten days after service of the notice of appeal give a bond to the county with one or more sureties, to be approved

by the county auditor, conditioned for the payment of all costs which shall be adjudged against him on such appeal in the superior court. The practice regulating appeals from and writs of certiorari to justice's courts shall, insofar as applicable, govern in matters of appeal from a decision or order of the board of county commissioners.

Appeals from board's action.

Nothing herein contained shall be construed to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction after the same has been presented to and filed as provided by law and disallowed in whole or in part by the board of county commissioners of the proper county. Such action must, however, be commenced within the time limitation provided in RCW 36.45.030.

Civil actions.

SEC. 6. Section 1, chapter 149, Laws of 1919 (heretofore divided and codified as RCW 36.45.010, 36.45.020 and 36.45.030) is divided and amended to read as set forth in sections 7, 8 and 9 of this amendatory act.

Division and amendment.

SEC. 7. (RCW 36.45.010) All claims for damages against any county must be presented before the board of county commissioners and filed with the clerk thereof within ninety days from the date that the damage occurred or the injury was sustained.

RCW 36.45.010 amended. Counties—Damage claims—Time for filing.

SEC. 8. (RCW 36.45.020) All such claims for damages must locate and describe the defect which caused the injury, describe the injury, and contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim accrued and be sworn to by the claimant: *Provided*, That if the claimant is incapacitated from verifying and filing his claim for damages within the time prescribed, or if the claimant is a minor,

RCW 36.45.020 enacted without amendment.

shall be certified by the said court, the court shall order all money and property in the hands of the said guardian in this state to be paid and turned over to the said foreign guardian upon his receipting therefor, and upon the filing of the said receipt by the said guardian with the clerk of the court, said guardian and his sureties shall be released from all liabilities for all money and property so paid and turned over, and should said guardian fail or refuse to pay or turn over such money or property as provided in said order, the said foreign guardian is hereby empowered as such guardian to sue for and receive the same.

SEC. 9. The sureties on the bond of any such guardian appointed in this state may be discharged from all liability thereunder under the same rules and regulations as are prescribed for the discharge of the sureties upon the bonds of executors and administrators in this state. Release of sureties on bond of guardian.

SEC. 10. Sections 3071, 3072, 3073, 3074, 3075, 3076, 3077 and 3078 of Vol. I, Hill's Annotated Statutes and Code of Washington are hereby repealed, and inasmuch as there is no statute providing for the appointment of guardians for non-resident insane and persons *non compos mentis*, an emergency is hereby declared to exist for the immediate taking effect of this act, therefore this act shall take effect and be in force from and after its passage. Emergency.

Approved March 11, 1893.

CHAPTER CXXI.

[H. B. No. 162.]

RELATING TO APPEALS FROM ORDERS OR DECISIONS OF COUNTY COMMISSIONERS.

AN ACT to amend section 2695 of the Code of Washington of 1881, the same being section 298 of volume one of Hill's Annotated Statutes and Codes of Washington, relating to appeals to the superior court from any decision or order of the board of county commissioners.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 2695 of the Code of Washington of 1881, the same being section 298 of volume one of

Hill's Annotated Statutes and Codes of Washington, be and the same hereby is amended so as to read as follows: Sec. 2695. Any person may appeal from any decision or order of the board of county commissioners to the superior court of the proper county. Such appeal shall be taken within twenty days after such decision or order, and the party appealing shall within said time serve notice on the county commissioners that the appeal is taken, which notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the clerk of the board; the party appealing shall within ten days after the service of the notice of appeal give a bond to the county with one or more sureties, to be approved by the clerk of the board, conditioned for the payment of all costs which shall be adjudged against him on such appeal in the superior court. The practice regulating appeals from and writs of *certiorari* to justice's courts shall, so far as the same may be applicable, govern in matters of appeal from the decision or order of the board of county commissioners. Nothing herein contained shall be so construed as to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction, after the same may have been presented and disallowed in whole or in part by the board of county commissioners of the proper county: *Provided*, That such action be brought within three months after such claim has been acted upon by such board.

Time in which
appeal may be
taken from
action of
county com-
missioners.

Approved March 11, 1898.

Sec. 2688. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

Sec. 2689. In all cases of vacancy occurring in any of the county offices in this territory, either by death, resignation or otherwise, it shall be the duty of the county commissioners of the county in which such vacancy occurs, at the first session thereafter, or as soon thereafter as practicable, to appoint a suitable elector of the proper county to fill such vacancy; such officer to remain in, or hold the office to which he may have been appointed, until the first general election after his appointment.

Sec. 2690. County commissioners in counties who own land under the provisions of section 2286 of the revised statutes of the United States, or who by relocation of county seat, are possessed of land the proceeds of the sale of which would enable said counties to assist in providing county buildings are hereby authorized to sell at public auction at the court house door, after thirty days, previous notice given by publication in a newspaper of the county, or posted in five public places of the county and convey to highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the purpose of paying for erection of public buildings.

Sec. 2691. All sales and conveyances heretofore made by order of any board of county commissioners of real estate within their respective counties are hereby ratified and legalized.

COUNTY PRINTING.

Sec. 2692. In all counties where two or more newspapers are published it shall be the duty of the county commissioners to let the public printing to the lowest bidder.

Sec. 2693. They shall at their meeting in May advertise for proposals for all the public printing for the term of one year.

Sec. 2694. It shall be the duty of all county officers where the printing is contracted for in accordance with the provisions of this act, to cause all legal notices, and delinquent tax lists, to be advertised in the paper designated by the county commissioners.

APPEALS.

Sec. 2695. Any person may appeal from the decision of the board of county commissioners to the next term of the district court of the proper district. Such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the county commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to, which notice shall be in writing and shall be delivered personally to the county commissioners, or left with the clerk of the board, and the party appealing shall give bond to the county with one or more securities, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court. The practice regulating appeals in and writs of certiorari to justice's courts, shall so far as the same may be applicable govern in matters of appeal from the decision or order of the county commissioners court. And nothing herein contained shall be so construed as to prevent a party having a claim against any county in this

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Sec. 2690. County commissioners in counties who own land under the provisions of section 2236 of the revised statutes of the United States, or who by relocation of county seat, are possessed of land the proceeds of the sale of which would enable said counties to assist in providing county buildings are hereby authorized to sell at public auction at the court house door, after thirty days, previous notice given by publication in a newspaper of the county, or posted in five public places of the county and convey to highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the purpose of paying for erection of public buildings.

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territory, enforcing the collection thereof by civil action in any court of competent jurisdiction, after the same may have been presented and disallowed in whole or in part by the board of county commissioners of the proper county: *Provided*, That such action be brought within three months after such claim has been acted upon by said board.

CHAPTER COX.

SUPPORT OF THE POOR.

SECTION

2696. Boards of county commissioners vested with the superintendence of the poor.

2697. By whom poor to be supported.

2698. Who to be first called on.

2699. When poor to be supported by the county.

2700. Minor shall be bound out.

2701. Provisions for a non-resident pauper.

2702. Residence of pauper to be proven.

SECTION

2703. Each commissioner authorized to contract in vacation.

2704. Resident entitled to relief; non-resident to be removed: how.

2705. After notice to leave county.

2706. Work-houses may be built.

2708. Penalty for bringing pauper into territory.

SEC. 2696. The board of county commissioners of the several counties of this territory are hereby vested with entire and exclusive superintendence of the poor in their respective counties: *Provided*, That this section shall not be so construed as to include any incorporated city or town having by its charter any of the powers enumerated in said section.

SEC. 2697. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grand children, brothers or sisters of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor as aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child.

SEC. 2698. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of the poor persons shall be next called on, and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; and if there be no brothers and sisters, the grand children of such poor person shall be called on, and then the grand parents; but married females whilst their husbands live shall not be liable to a suit.

SEC. 2699. When any poor person shall not have relatives in any county in this territory, as are named in the preceding sections, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require, out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

SEC. 2700. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because

Sec. 2688. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

Sec. 2689. In all cases of vacancy occurring in any of the county offices in this territory, either by death, resignation or otherwise, it shall be the duty of the county commissioners of the county in which such vacancy occurs, at the first session thereafter, or as soon thereafter as practicable, to appoint a suitable elector of the proper county to fill such vacancy; such officer to remain in, or hold the office to which he may have been appointed, until the first general election after his appointment.

Sec. 2690. County commissioners in counties who own land under the provisions of section 2236 of the revised statutes of the United States, or who by relocation of county seat, are possessed of land the proceeds of the sale of which would enable said counties to assist in providing county buildings are hereby authorized to sell at public auction at the court house door, after thirty days, previous notice given by publication in a newspaper of the county, or posted in five public places of the county and convey to highest bidder, for cash, any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the purpose of paying for erection of public buildings.

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Sec. 2694. It shall be the duty of all county officers where the printing is contracted for in accordance with the provisions of this act, to cause all legal notices, and delinquent tax lists, to be advertised in the paper designated by the county commissioners.

APPEALS.

Sec. 2695. Any person may appeal from the decision of the board of county commissioners to the next term of the district court of the proper district. Such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the county commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to, which notice shall be in writing and shall be delivered personally to the county commissioners, or left with the clerk of the board, and the party appealing shall give bond to the county with one or more securities, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court. The practice regulating appeals in and writs of certiorari to justice's courts, shall so far as the same may be applicable govern in matters of appeal from the decision or order of the county commissioners court. And nothing herein contained shall be so construed as to prevent a party having a claim against any county in this

territory, enforcing the collection thereof by civil action in any court of competent jurisdiction, after the same may have been presented and disallowed in whole or in part by the board of county commissioners of the proper county: *Provided*, That such action be brought within three months after such claim has been acted upon by said board.

CHAPTER CXX.

SUPPORT OF THE POOR.

<p>SECTION 2696. Boards of county commissioners vested with the superintendence of the poor. 2697. By whom poor to be supported. 2698. Who to be first called on. 2699. When poor to be supported by the county. 2700. Minor shall be bound out. 2701. Provisions for a non-resident pauper. 2702. Residence of pauper to be proven.</p>	<p>SECTION 2703. Each commissioner authorized to contract in vacation. 2704. Resident entitled to relief; non-resident to be removed; how. 2705. After notice to leave county. 2706. Work-houses may be built. 2707. Penalty for bringing pauper into territory.</p>
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SEC. 2697. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy or other cause, shall be supported by the father, grandfather, mother, grandmother, children, grand children, brothers or sisters of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, grandfather, mother, grandmother, child, grandchild, sister or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, to be recovered in the name of the county commissioners for the use of the poor as aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child.

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SEC. 2700. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because

finement than five miles: Provided, That if any such convict shall refuse to perform such labor he shall be kept in close confinement on bread and water. The sheriff having the custody of such convicted persons may, to secure them from escape, attach a ball and chain to said convicts.

SEC. 25. No county commissioner shall directly or indirectly, be concerned in any contract for work to be done or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action at law for the use of the county, and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

SEC. 26. The county commissioners are authorized and empowered to administer all oaths or affirmations necessary in discharging the duties of their office, and have the same power as justices of the peace to commit for contempt any witness refusing to testify before them.

SEC. 27. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

SEC. 28. In all cases of vacancy occurring in any of the county offices in this Territory, either by death, resignation or otherwise, it shall be the duty of the county commissioners of the county in which such vacancy occurs, at the first session thereafter, or as soon thereafter as practicable, to appoint a suitable elector of the proper county to fill such vacancy; such officer to remain in, or hold the office to which he may have been appointed, until the first general election after his appointment.

SEC. 29. Any person may appeal from the decision of the board of county commissioners to the next term of the district court of the proper district. Such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the county commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to, which notice shall be in writing and shall be delivered personally to the county commissioners, or left with the clerk of

the board, and the party appealing shall give bond to the county with one or more securities, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court. The practice regulating appeals in, and writs of *certiorari* to justices' courts, shall so far as the same may be applicable govern in matters of appeal from the decision or order of the county commissioners' court. And nothing herein contained shall be so construed as to prevent a party having a claim against any county in this Territory, enforcing the collection thereof by civil action in any court of competent jurisdiction, after the same may have been presented and disallowed in whole or in part by the board of county commissioners of the proper county: Provided, That such action be brought within three months after such claim has been acted upon by said board.

Sec. 30. All acts and parts of acts heretofore passed defining the duties of county commissioners, in conflict with the provisions of this act be and the same are hereby repealed.

Passed the House of Representatives December 1, 1869.

GEORGE H. STEWARD,

Speaker of the House of Representatives.

Passed the Council December 1, 1869.

WILLIAM McLANE,

President of the Council.

Approved December 1, 1869.

ALVAN FLANDERS,

Governor of Washington Territory.

county jails of their respective counties, under direction of the sheriff, convicted of any crime or misdemeanor, to work on the roads of their respective counties, but such convicts shall not be put to labor at a greater distance from the jail or place of confinement than five miles: *Provided*, That if any such convict shall refuse to perform such labor he shall be kept in close confinement on bread and water. The sheriff having the custody of such convicted persons may, to secure them from escape, attach a ball and chain to said convicts.

SEC. 25. No county commissioner shall directly or indirectly as contractor, be concerned in any contract for work to be done or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action at law for the use of the county, and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

SEC. 26. The county commissioners are authorized and empowered to administer all oaths or affirmations necessary in discharging the duties of their office, and have the same power as justices of the peace to commit for contémp't any witness refusing to testify before them.

SEC. 27. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

SEC. 28. In all cases of vacancy occurring in any of the county offices in this Territory, either by death, resignation or otherwise, it shall be the duty of the county commissioners of the county in which such vacancy occurs, at the first session thereafter, or as soon thereafter as practicable, to appoint a suitable person to fill such vacancy; such person or officer to remain in, or hold the office to which he may have been appointed, until the first regular election after his appointment.

✓ SEC. 29. Any person may appeal from the decision of the board of county commissioners to the next term of the district court of the proper district. Such appeal shall be taken within twenty days after such decision, and the party appealing shall

notify the county commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to, which notice shall be in writing and shall be delivered personally to the county commissioners, or left with the clerk of the board, and the party appealing shall give bond to the county with one or more securities, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court.

SEC. 30. All acts and parts of acts in conflict with this act be and the same are hereby repealed.

SEC. 31. This act shall take effect and be in force from and after its passage.

Passed the House of Representatives January 21, 1867.

HENRY MILES,

Speaker of the House of Representatives.

Passed the Council January 23, 1867.

B. F. DENNISON,

President of the Council.

Approved January 31, 1867.

GEORGE E. COLE,

Governor of Washington Territory.

AN ACT

TO PROVIDE FOR THE ASSESSING AND COLLECTING TERRITORIAL AND COUNTY REVENUE.

SEC. 1. Poll tax two dollars on every male between twenty-one and fifty years.

Poll tax for county purposes.

Property to be valued in equal and rateable proportion.

County commissioners to fix rate of county tax.

Territorial tax three and a half mills.

Said tax to be used in payment of warrants in order of number and issue.

and such commissioner shall moreover forfeit any compensation he was to receive on such contract.

Sec. 28. The commissioners are authorized and empowered to administer all oaths or affirmations, necessary in discharging the duties of their office, and have the same power as justices of the peace, to commit for contempt any witness refusing to testify before them.

Sec. 29. Until proper buildings are erected at a place fixed upon for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

Sec. 30. Any person may appeal from the decision of the board of commissioners, to the next term of the district court of the same county; such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to; which notice shall be in writing, and shall be delivered personally to the commissioners, or left with the clerk of the board; and the party appealing shall give bond to the county with one or more sureties, to be approved by such clerk, conditioned to pay all the costs which shall be adjudged against him on such appeal in the said district court.

Sec. 30. This act to take effect and be in force from and after its passage.

PASSED, January 27th, 1863.

AN ACT

RELATING TO THE SUPPORT OF THE POOR.

- SECTION 1. Boards of county commissioners vested with the superintendence of the poor.
- " 2. By whom poor to be supported.
Penalty for refusal to support the poor.
Proviso.
- " 3. Who to be first called on.
Married females not to be sued.
- " 4. When poor to be supported by the county.
- " 5. Provisions for a non-resident pauper.

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regular meeting of the county commissioners, and if said scalp or scalps are not in good condition for so keeping, the auditor may refuse to receive the same until they are so dried or prepared.

"Sec. 10. This act shall not be so construed as to affect, in any manner, any certificate given or order drawn before the passage of this act.

"Sec. 11. All acts or parts of acts in any manner conflicting with the provisions of this act be and the same are hereby repealed.

"Sec. 12. This act to take effect and be in force from and after its passage and approval by the governor."

Approved, Nov. 14, 1879.

AN ACT

REGULATING APPEALS FROM THE DECISIONS OF COUNTY COMMISSIONERS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the district courts shall hear and determine appeals, from any decisions of the board of county commissioners, whenever the person aggrieved by such decision has filed, within twenty days after the rendition of such decision, with the auditor of the county, a notice of appeal, stating in substance that he appeals from such decision, and also stating the term of the district court when such appeal is to be prosecuted.

SEC. 2. The taking of such appeal shall not operate to stay proceedings unless a bond is filed with the county auditor in the sum of one hundred dollars, with sureties to be approved by the county auditor, and conditioned for the performance of any judgment to be rendered by the said district court, and a larger sum may be fixed by the district court, or judge thereof, whenever it shall appear satisfactorily that the bond given is insufficient in amount.

SEC. 3. It shall be the duty of the auditor, after such no-

tice of appeal is filed, to transmit to the district court a transcript of said notice, and such papers and record entries as may be required by the appellant, or his attorney, upon being paid or secured his fees therefor, and upon the receipt of such transcript, the district court shall be deemed to have acquired full jurisdiction of the cause and hear and determine the same without the intervention of a jury, at the first term which convenes more than twenty days after the filing of said notice of appeal.

Sec. 4. This act to take effect and be in force from and after its approval.

Approved, Nov. 10, 1879.

AN ACT

DEFINING LIBEL, AND PROVIDING FOR THE PUNISHMENT THEREOF.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That a libel is a defamation of a person made public by any printing, writing, sign, picture, representation or effigy, tending to provoke him to wrath or expose him to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any defamation made public as aforesaid, designed to blacken and vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends.

Sec. 2. Every person who makes, composes, dictates or procures the same to be done, or who publishes or willfully circulates such libel, or in any way knowingly and willfully aids or assists in making, publishing or circulating the same, shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Sec. 3. An indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled, of the defamatory matter on which the indictment is founded; but it shall be sufficient to state generally, that the same was published concerning him, and the fact that it was so published, must be established on the trial.

Sec. 4. In prosecutions for libel the truth thereof may be

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APR 25 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

FRIENDS OF NORTH SPOKANE COUNTY
PARKS,

No. 13-2-00690-6

Plaintiff,

vs.

**MOTION TO DISMISS PURSUANT
TO C.R. 12(b)(6)**

SPOKANE COUNTY,

Defendant.

COMES NOW Star Saylor Investments, LLC ("SSI"), by and through their counsel, Lukins & Annis, P.S., and moves this Court for an order pursuant to the provisions of Rule 12(b)(6) of the Washington Civil Rules, dismissing all counts of Plaintiff's February 19, 2013 Complaint on the ground that none of the counts contained therein states a claim upon which relief can be granted.

In support of its motion, Defendants rely on the attached Memorandum.

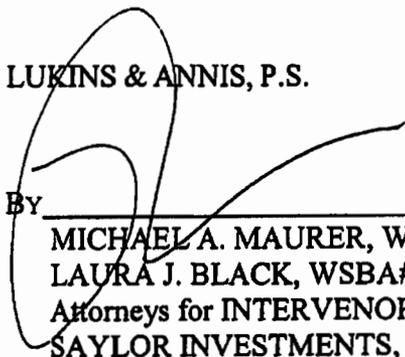
DATED this 25th day of April, 2013.

MOTION TO DISMISS PURSUANT TO C.R. 12(b)(6): 1

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

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LUKINS & ANNIS, P.S.

By 

MICHAEL A. MAURER, WSBA#20230
LAURA J. BLACK, WSBA#35672
Attorneys for INTERVENOR STAR
SAYLOR INVESTMENTS, LLC

MOTION TO DISMISS PURSUANT TO C.R. 12(b)(6): 2

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 435-9555
Fax: (509) 747-2323

1 **CERTIFICATE OF SERVICE**

2 I, Allison Yates, do hereby certify that on the 25th day of April, 2013, a true and
3 correct copy of the foregoing document was delivered to the following persons in the manner
4 indicated:

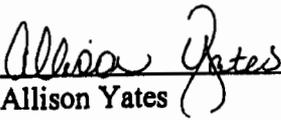
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6 Ronald Paul Arkills
7 Attorney at Law
8 1100 W. Mallon Ave.
9 Spokane, WA 99201

VIA FIRST CLASS MAIL
VIA CERTIFIED MAIL
VIA HAND DELIVERY
VIA FACSIMILE
VIA EMAIL

10 Stephen K. Eugster
11 Attorney at Law
12 2418 W. Pacific Ave.
13 Spokane, WA 99102

VIA FIRST CLASS MAIL
VIA CERTIFIED MAIL
VIA HAND DELIVERY
VIA FACSIMILE
VIA EMAIL

14 EXECUTED on April 25, 2013, at Spokane, Washington.

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16 
17 Allison Yates
18 Legal Assistant

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25
MOTION TO DISMISS PURSUANT TO C.R. 12(b)(6): 3

LAW OFFICES OF
LUKINS & ANNIS, PS
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Spokane, WA 99201
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COPY
ORIGINAL FILED

JUN 05 2013

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR SPOKANE COUNTY

FRIENDS OF NORTH SPOKANE)
COUNTY PARKS,)

Plaintiff,)

v.)

SPOKANE COUNTY; FRED MEYER)
STORES, INC.; and STAR SAYLOR,)
LLC,)

Defendants.)

No. 13-2-00690-6

**DEFENDANT FRED MEYER STORES,
INC.'S ANSWER TO AMENDED
COMPLAINT FOR DECLARATORY
DETERMINATIONS, JUDGMENTS
AND AFFIRMATIVE ACTIONS**

COMES NOW, Steven J. Tucker, Spokane County Prosecuting Attorney, by and through
Ronald P. Arkills, Deputy Prosecuting Attorney, representing the Defendant, Fred Meyer Stores,
Inc. ("Defendant"), and answers Plaintiff's Amended Complaint For Declaratory Determinations,
Judgments and Affirmative Actions ("Amended Complaint") as follows:

I.

The Defendant admits Paragraphs 2, 3, 5, 13, 30, 32, 34, 35 and 39 of the Complaint.

II.

The Defendant denies Paragraphs 14, 15, 27, 31, 33, 36, 37, 38, 40 and 70 of the Amended

Complaint.

FRED MEYER'S ANSWER--1

SPOKANE COUNTY
Prosecuting Attorney
W. 1115 Broadway Ave.
Spokane, WA 99260
(509) 477-5764

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III.

The Defendant is without knowledge of the facts alleged in Paragraphs 1, 4, 6-12, 16-26, 28, 29, 42-55, 57, 58, 60, 62-68, 71, 72 and 74-77 of the Amended Complaint; and, therefore, denies the same.

AFFIRMATIVE DEFENSES

I.

The Complaint fails to state a claim upon which relief may be granted.

II.

The Plaintiff lacks standing to bring this action.

III.

A necessary party to this proceeding under CR 19 has not been timely joined as a party.

IV.

The Complaint does not present a justiciable controversy. Spokane County has not yet decided to allow a road through Spokane County Tax Parcel No. 36082.9161.

V.

The Plaintiff has failed to exhaust its administrative remedies.

VI.

The Plaintiff's challenge to the land use decisions referenced in Paragraphs 19-22, 24-25 and 28-29 of the Amended Complaint is barred as untimely pursuant to the Land Use Petition Act and RCW 36.70C.040.

VII.

The Plaintiff is collaterally estopped from challenging the Defendant's authority to allow a road through Spokane County Tax Parcel No. 36082.9161 by virtue of the Spokane County Hearing Examiner's Findings, Conclusion and Decision rendered in File No. ZN-05-09(referenced in Paragraphs 24-25 and 28-29 of the Amended Complaint).

WHEREFORE, the Defendant, having fully answered Plaintiff's Amended Complaint, requests that judgment be entered as follows:

1. The Plaintiff's Amended Complaint for Declaratory Determinations, Judgments and Affirmative Actions be dismissed with prejudice.
2. That the Defendant be granted any additional or further relief which the court finds appropriate or just.

DATED this 5th day of June, 2013.

STEVEN J. TUCKER
Prosecuting Attorney



Ronald P. Arkills
Senior Deputy Prosecuting Attorney
WSBA# 10773
Attorney for Defendant
Fred Meyer Stores, Inc.

CERTIFICATE OF MAILING

I certify that on June 3, 2013, I mailed and faxed a copy of the foregoing Answer To Amended Complaint For Declaratory Determinations, Judgments, and Affirmative Actions postage prepaid, to:

FRED MEYER'S ANSWER-3

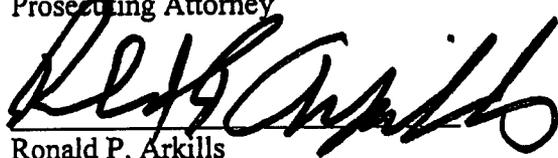
SPOKANE COUNTY
Prosecuting Attorney
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Stephen K. Eugster
2418 W. Pacific Avenue
Spokane, Washington 99201

DATED this 5th day of June, 2013.

STEVEN J. TUCKER
Prosecuting Attorney



Ronald P. Arkills
Deputy Prosecuting Attorney
WSBA# 10773
Attorney for Defendant
Fred Meyer Stores, Inc.

FRED MEYER'S ANSWER-4

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27 254