

**FILED**

JUN 05 2017

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

COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

Wallace and Rosie Bacon,  
Plaintiff/Applee,

vs.

No. 34603-0-III

Thomas and Ellen Matulis,  
Defendant/Appellant

**OPENING BRIEF OF DEFENDANT-APPELLANT**  
**ON APPEAL FROM SPOKANE SUPERIOR COURT**  
**CASE NO. 2015-02-03648-8**  
**JUDGE JOHN C. COONEY PRESIDING**

OPENING BRIEF OF DEFENDANT-APPELLANT

P-1

Thomas Matulis  
1517 E. DP-Milan RD  
Deer Park, WA 99006  
(509) 723-3995

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**I. STATEMENT OF JURISDICTION**

The Superior Court of Spokane County in the state of Washington had jurisdiction over the complaint because both the Plaintiffs and the Defendants, Thomas and Ellen Matulis, are residents of Spokane County; the Plaintiffs' property is in Spokane County and Inland Power and Centurylink own and maintain power and communications lines buried on the Plaintiffs' property. Division III of Washington State Court of Appeals is the proper venue for all appeals arising from Spokane County Superior Court.

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**II. STATEMENT OF THE CASE**

On September 3, 2015, the Plaintiffs brought a complaint against the Defendants to Quiet a Title; for Damages; and, Injunctive Relief Regarding Buried Power and Communications Lines. In Section III, 3.3 of the complaint, under **OPERATIVE FACTS**; the Plaintiffs accused Thomas Matulis, of knowingly defrauding them and Inland Power and Centurylink, "... by representing to them that the Perry Road right of way extended north of E. Deer Park Milan Road along the common boundary line between the Bacon and Matulis properties." The Plaintiffs alleged that Matulis' misrepresented, and that they and both companies, "... had a right to rely on his misrepresentation because Spokane County Engineering map and the Official Plat Map showed that the unopened right of way for Perry Road extended north of E. Deer Park Milan Road and for the length of Bacon/Matulis' properties." The Plaintiffs alleged that Matulis "induced" them so they would "... allow the utilities at issue to be located on his property and induced Inland Power and Centurylink to bury the subject utilities on Bacons' property."

1 In 3.4 of Section III, Plaintiffs allege as fact that the "... Perry Road Right of Way which  
2 extends north of E. Deer Park Milan Road was vacated in the 1890's based upon the non-use  
3 statute in effect at the time, Ballinger's Code Section 3803 ... " In 3.5, the Plaintiffs state, "The  
4 consent Matulis obtained from Bacon, Inland Power and Centurylink was void ab initio because  
5 it was secured by fraud."

6  
7 In Section IV, Plaintiffs asked for an order to quiet any title that the Matulis family might  
8 have to claim utilities running across the Plaintiffs' property. In Section V, Plaintiffs asked that  
9 all utilities running across their property to the Matulis' property to be removed from their  
10 property "forthwith" and asked for a permanent injunction stop the Matulis family from "future  
11 trespass and commission of waste on Bacons' property."

12  
13 In Section VI, the Plaintiffs absolve Inland Power and Centurylink of all liability for  
14 damages and ask for relief solely from Defendants, Matulis. The Plaintiffs claimed that, "In the  
15 process of constructing his road Matulis damaged Bacons' property, trees and foliage." "The  
16 activities of Matulis and/or their invitees have created ruts, scars and erosion upon Bacons'  
17 property causing damages in amounts to be proved at trial."

18  
19 On September 10, 2015, Defendants Inland Power & Light Co. answered the Plaintiffs'  
20 complaint by agreeing that they "... relied upon defendants Matulis' representation and that  
21 Inland Power had the right to rely upon Matulis' representations and that based upon Matulis'  
22 representations Inland Power buried underground utilities lines upon Plaintiffs' property."  
23 Inland Power & Light Co. agreed with the Plaintiffs' that Matulis' consent from the Plaintiffs to  
24 lay power and communications lines on Bacons' property was obtained by fraud. Inland Power  
25 states, "Plaintiffs fail to state a claim against Inland Power upon which relief can be granted."

26  
27 **OPENING BRIEF OF DEFENDANT-APPELLANT**

28 P-3

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1 In Section VII, 2., AFFIRMATIVE DEFENSES, Inland Power affirms that all  
2 agreements made with Bacons are "... void and unenforceable under the statute of frauds, RCW  
3 19.36.010." Inland's answers conclude with a "PRAYER FOR RELIEF," asking the court to  
4 dismiss the Plaintiffs' claims against them, "with prejudice." Inland Power asks for attorney fees  
5 and, "... leave to conform its pleadings to the proof, if applicable," and, ". such other relief as  
6 the Court deems just and proper."

8 On November 6, 2015, the Defendants Matulis' answered the Plaintiffs' complaint  
9 denying all charges of fraud and inducement and claiming that, "Plaintiffs have failed to state a  
10 case of fraud upon which relief can be granted." Defendants Matulis' defenses are, "Estoppel,  
11 waiver, laches; acquiescence, agreement and permission, and; the affirmative defense that,  
12 "Defendants have the benefit of a prescriptive established by use over more than 10 years." No  
13 evidence was offered by any of the parties to support either the complaint or the answers.

15 On April 18, 2016, Plaintiffs filed a Motion for Summary Judgement and set a date for  
16 the motion to be heard on May 27, 2016. The Plaintiffs asked that the court determine that there  
17 are no easements for the lines to be laid on Bacons' property and requested that the court order  
18 Inland Power & Light Co. and Centurylink Telecommunications, "... cease and desist from  
19 transmitting telephone services and electrical services across, over and/or under Plaintiffs'  
20 property to service Defendant Matulis' property. The Plaintiffs asked that the court enjoin the  
21 Defendants from trespass and asked that the court award them damages for trespass and waste.  
22 The Plaintiffs' based their motion on a Declaration of WALLACE BACON with exhibits.  
23 Grounds for Plaintiffs' motion was CR56 and the authorities cited in their Memorandum. None  
24 of the Defendants responded in writing to the Plaintiffs' motion for Summary Judgment.

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28 **OPENING BRIEF OF DEFENDANT-APPELLANT**

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1 On May 27, 2016, the Defendant Thomas Matulis showed up to court and brought  
2 witnesses. The court refused to allow Mr. Matulis to present witnesses. Defendants Inland  
3 Power & Light Co. and Centruylink Telecommunications Inc., were not present in the court  
4 room. Plaintiffs' attorney, J. Steve Jolley spoke for both companies. Mr. Jolley presented the  
5 Plaintiffs' case against Thomas and Ellen Matulis. The court asked Defendant, Thomas Matulis  
6 if he had any arguments. Matulis argued his case. The court granted the Plaintiffs' Summary  
7 Judgment because the Matulis's did not respond to the Plaintiffs' motion in writing. Matulis  
8 asked for a continuance to obtain an attorney and respond in writing, but the court denied.

10 On June 6, 2016, Defendants, Thomas and Ellis Matulis filed a Motion for  
11 Reconsideration claiming prejudice on the part of the court for not allowing them a continuance  
12 and for not considering Thomas Matulis's oral arguments or allowing him to present witnesses.  
13 Judge Cooney denied Matulus' motion for reconsideration. Thomas and Ellen Matulis filed a  
14 Notice of Appeal and a Motion for Stay of Judgment and Waiver of bond on July 15, 2016. The  
15 court failed to respond to the Defendants' motion for stay.

18 On June 8, 2016, Thomas Matulis paid for a Certified Verbatim Report (VRP) of the  
19 Proceedings of May 27, 2016. On June 9, 2016, Thomas Matulis received a paper copy of the  
20 VRP from the Official Court Reporter for Judge Cooney, Korina Kerbs. On June 10, 2016, the  
21 Plaintiffs' attorney, J. Steve Jolley, sent a private email to the Official Court Reporter, Korina  
22 Kerbs, asking her if she made a mistake when she wrote "trouble" instead of "treble." Jolley did  
23 not copy Thomas or Ellen Matulis. Ms. Kerbs altered the VRP that she gave to Thomas Maatulis  
24 and sent it back to Jolley with the corrections that he wanted. Ms Kerbs did not send a copy to  
25 Thomas Mataulis. Ms. Kerbs did not notify Thomas Matulis of the changes that she made.

27 **OPENING BRIEF OF DEFENDANT-APPELLANT**

28 P-5

Thomas Matulis  
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1 On August 26, 2016, Thomas Matulis received a copy of the email communication  
2 between Korina Kerbs and Steve Jolley concerning her mistakes in the VRP that Matulis  
3 received on June 9<sup>th</sup>. A copy of the VRP was attached to an email that Korina Kerbs sent to  
4 Matulis. Even though Korina Kerbs' emails show that she did not correct the VRP until June 10,  
5 2016; Korina Kerbs back dated her VRP to June 9, 2016. Defendants Matulis' lost all faith in  
6 the judicial system and asked the appeal court for an extension of time to listen to an audio to  
7 verify all of Kerbs mistakes. The appeal court granted the Matulis' extension however; Ms.  
8 Kerbs was not able to provide Tom Matulis with an audio transcript, so she submitted her altered  
9 and backdated version of the VRP to the appeal court. Matulis filed a motion in Superior Court  
10 asking the court to allow him to supplement the VRP with a Narrative Report reflecting  
11 additional mistakes that he found still in the VRP, that Korina Kerbs altered on June 10, 2016.  
12 The court denied Matulis' motion on 03/03/17, which left the Matulis's no alternative, but to  
13 proceed with their appeal using a VRP that is fundamentally flawed. At the hearing Defendant,  
14 Thomas Matulis asked the court to dismiss Korina Kerbs for conflict of interest because she was  
15 the subject matter of the hearing, however; the court denied. Matulis objected and added the  
16 issue to his appeal, however he is unable to obtain a transcript at this time because he has asked  
17 that Korina Kerbs not transcribe the hearing for conflict of interest. The court has not given the  
18 Matulis's an alternative, so they remain without a transcript of the March 3<sup>rd</sup> hearing.

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23 On May 3, 2017, Defendants Matulis' set a hearing date for May 19, 2017 for their  
24 Motion for Stay and Waiver of Bond filed July 15, 2016. Matulis' asked for change of judge for  
25 conflict of interest because they filed a complaint against Judge Cooney for unethical conduct.  
26 Cooney refused to step down and denied Matulis' request for stay and waiver of bond.

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28 **OPENING BRIEF OF DEFENDANT-APPELLANT**

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**III. AFFIDAVIT OF FACTS**

This Affidavit of Facts lays groundwork for argument against the Summary Judgement issued by the Superior Court of Spokane County Washington, on May 27, 2016.

Defendant Thomas Mautilus declares the following;

1. I am the defendant in this matter.
2. I am not educated nor skilled in matters of law and cannot speak legalese.
3. I have no knowledge and/or expertise in arguing for myself in court, nor do I know and/or understand the proper procedure for presenting an appeal.
4. I have no legal background and/or education and cannot provide this court with a Table of Authorities as I do not know or understand legal research.
5. I am not qualified to represent myself and do not have enough money to hire an attorney.
6. I am 70 years old.
7. I am a disabled Viet Nam veteran of the U.S. Air Force.
8. I am an American Citizen; a property owner in Spokane County and a taxpayer.
9. I am not a criminal nor have I ever been convicted of a crime.
10. I am of sound mind, and; all of my faculties and credibility are intact.
11. I have not now, nor have I ever, defrauded anyone.

The following is testimony and evidence that could/would have been presented if the Defendants would have been granted a continuance. To the best of our knowledge the following is true and correct and verifiable through witness testimony and documentation:

**OPENING BRIEF OF DEFENDANT-APPELLANT**

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Thomas Matulis  
1517 E. DP-Milan RD  
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1 On August 10, 1994, we purchased our home at 1517 E. Deer Park – Milan RD in Deer  
2 Park, Washington with approximately 5 acres of land. Ellen Matulis’s parents (Cosgroves)  
3 owned approximately 20 acres of unimproved wooded land running adjacent to our 5-acre home.  
4 Our family always referred to this piece of property as “The Acreage.” When we purchased our  
5 property, there was an old cut-away-right-of-way road that we called the “Old Harding Road.”  
6 The Old Harding Road, (OHR), ran north of where Perry Road ends at Deer Park-Milan Road  
7 north between our neighbor’s, Scates’ and Catos’ boundary line that veers right, or to the east, as  
8 you run north and crosses about 40 ft. of Wallace Bacon’s land and back onto our land running  
9 all the way north to the Northwest Corner of the NW ¼ of Section 4, TNSHP 28, RN 43 of the  
10 Willamette Meridian. (Exhibit A) If you look at the yellow marking on Exhibit A you will see  
11 the satellite view of the OHR and you can see the homes of Ryan Scates to the left, on the  
12 westside of the entrance onto the OHR; and Timothy Cato is to the right, on the eastside of the  
13 entrance onto the OHR. Following the OHR marked in yellow, you will see that the OHR veers  
14 to the right, on the eastside and goes back onto our property and stays there going north to our  
15 boundary line in the Northwest Corner of the NW ¼, TNSHP 28, RN 43, Willamette Meridian.  
16  
17  
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19 Timothy and Patti Cato live on Deer Park Milan RD to the west of us. The Catos  
20 purchased their home in 1990. The Plaintiffs’, Wallace and Rosie Bacon, purchased their home  
21 in 2004. Bacons’ property runs west kitty corner from the Cato boundary line and due north of  
22 Ryan Scates’ property line. Wallace Bacon’s property extends north running somewhat parallel  
23 with our property which together make up a portion of the OHR which we have traveled for over  
24 two decades until the summary judgment barred us. (Exhibit B) This exhibit B is a Google Earth  
25 map linking the Scates, Cato, Bacon and Matulis properties together with OHR.  
26  
27

1 On March 10, 2008, Linda Cosgrove Gift Deeded the 20 acres (Acreage) to us. The  
2 OHR is a cut-away-road clear of brush and trees. (Exhibit C) This picture was taken after the  
3 Summary Judgment hearing where Judge Cooney quieted our title to travel this right-of-way  
4 even though we had driven it for over two decades, and; charging us with damages for taking  
5 down trees and brush that were never there because we always drove the OHR whenever we  
6 needed to get back to our "Acreage" property. The power junction box that we paid Inland  
7 Power & Light Co. for sets on the small approximately 40 ft section of the OHR that runs on  
8 Wallace Bacon's property line in conjunction with our property line. (Exhibit D)  
9

10 Historical evidence presented in Wallace Bacon's Declaration in Support of Motion for  
11 Summary Judgment, (Exhibit A), shows a petition dated 1890 from a group of "freeholders" to  
12 Spokane County Commissioners to build a road "beginning" at the NW Corner of the NW ¼ of  
13 Section 4, Township 28, Range 43, of the Willamette Meridian. R. W. Harding headed the  
14 petition and posted a bond; hence the name Harding Road. The freeholder petitioners asked that  
15 the county end the road at the center of Section 28 to connect with Colville Road. Instead, the  
16 county began at Section 28 and called the road "Perry Road." The county ended Perry Road  
17 (Old Harding Road) at Deer Park-Milan road. The last almost ½ mile of the Old Harding Road  
18 was never improved by the county, yet the freeholders continued to travel the full extent of the  
19 OHR according to the petition and the order of the County Commissioners dated August 18,  
20 1890. In Wallace Bacon's Declaration Exhibit A; Deputy County Prosecutor, David Hubert  
21 purports that the OHR was automatically vacated in 1890 under Ballinger Code Section 3803.  
22 We disagree. In the same declaration, Wallace Bacon offered an estimate of damages, but did  
23 not offer evidence of any actual damage.  
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28 **OPENING BRIEF OF DEFENDANT-APPELLANT**

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Thomas Matulis  
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1 We traveled the Old Harding Road that extends north of Perry Road for over 20 years  
2 without notice of trespass from Wallace Bacon. We traveled OHR for 10 of those 20 years prior  
3 to Wallace Bacon purchasing his property. We continued to travel OHR for over 10 years after  
4 Wallace Bacon purchased his property. +

5  
6 On 03/10/14, we applied to Inland Power & Light Co. to lay power lines and give us a  
7 power junction box. (Exhibit D) We provided Inland Power with two easements; one going  
8 across our 5-acre piece and one going on our 20-acre acreage. (Exhibit E) Inland Power gave us  
9 two options for different prices. (Exhibit F) We paid Inland Power over \$7,000.00 in good faith  
10 to put power lines on our property with the exception of the approximate 40 feet of “cut-away  
11 right-of-way” described in option #2 of where to dig our trenches to lay our lines. This was a  
12 joint decision between Tim Cato, Wallace Bacon and our son-in-law Jeremiah Hansen. (Exhibit  
13 G) Jeremiah’s friend Adam Manson was also present when Wallace Bacon and Tim Cato agreed  
14 with Inland Power how and where the trenches should be dug which was pretty much on the Old  
15 Harding Road which already had ruts and scars from over 100 years of travel. declare under  
16 penalty of perjury that the foregoing is true and correct to the best of our knowledge. Inland  
17 Power had access to maps. They could/should have gotten easements or permits for us to dig  
18 and them to lay their lines. We object to being convicted of fraud and causing damage to the  
19 approximate 40 feet of Old Harding Road portion on Wallace Bacon’s property. We signed a  
20 contract with Inland Power in Good Faith and our neighbor was in agreement with the contract.  
21 This case needs to be overturned because it is frivolous and without merit. Wallace Bacon did  
22 not prove a case of fraud against us; nor did he prove damages. His only evidence of fraud was  
23 an old letter that we received from the county that Bacon obviously already had in his possession  
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Thomas Matulis  
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1 since he filed it with his declaration. Bacon waited one full year before he filed a claim against  
2 us and at no time did he tell us he was going to sue us and at no time did Wallace or Rosie Bacon  
3 object to lines being laid on his property or the junction box being laid on his property. We rely  
4 on the defenses and Affirmative defense that our attorney, Steve Schneider, answered for us. We  
5 are the Defendants. We do not have to prove our innocence. Wallace Bacon was supposed to  
6 prove his case by the Preponderance of the Evidence. The only evidence that Wallace Bacon  
7 provided for the court in his Declaration was a letter and Memorandum from David W. Hubert  
8 analyzing whether or not the Old Harding Road is still and open road. Hubert winds up his  
9 memorandum stating:  
10

11  
12 The evidence that I believe would be sufficient to establish that Perry Road had  
13 been opened in the part that is now in question, would be evidence of what process  
14 Spokane County employed in 1890 for constructing and opening county roads and then  
15 evidence of Spokane County having followed that process in opening the part of Perry  
16 Road. Without evidence to support the assertion that Perry Road was opened within the  
17 5 year time limit under the 'non use' statute, it is my opinion that Spokane County may  
18 be subject to a claim for damages and compensation by the owners of the property over  
19 which that part of Perry Road would now be constructed and opened.

20 This paragraph can only lead a reasonable person having no knowledge of  
21 legalese to believe that David Hubert's findings are not conclusive. This fact alone refutes the  
22 allegation of fraud because when we received this letter we didn't know any more about the Old  
23 Harding Road than we did when we asked the question. Therefore, we did nothing to defraud  
24 Inland Power or the Bacons. We dug the trench; buried the lines and Wallace Bacon grated over  
25 the dirt. There were no trees or brush removed on Wallace Bacon's 40 ft of property. The land  
26 looked the same as it did before we dug the trenches. The only evidence that Wallace Bacon  
27 provided for the court on his claim for damages was an estimate from "Palms Tree Service"

1 stating what they would charge if all the damage they listed would have been done, but it wasn't.  
2 Wallace and Rosie Bacon failed to provide one shred of evidence that there was any damage  
3 done to their property whatsoever, which does not meet their burden of proof.

4  
5 The court tried to rely on the Ballinger Code to say that the Old Harding Road was  
6 vacated in 1895 because the county failed to improve the road within five years however; the  
7 Ballinger Code, Section 32, Chapter 19, states that the non-use law is self-executing, however  
8 the code requires a judicial determination in order to establish a paper title to the land.

9  
10 However, where a county road or alley became vacated through being unopened  
11 for a period of five years, a judicial determination is needed to free the land from the  
apparent record easement for the purpose of obtaining paper title.

12  
13 The railroad bought up almost all, if not all, of the land in Section 5, Township  
14 28, Range 43, WM which includes Wallace and Rosie Bacon's property in 1894, one year before  
15 the nonuse statute of the Ballinger Code became self-executing. We assume that this is the  
16 reason that the public continued to use the Old Harding Road. R.W. Harding bought 160 acres  
17 including the Northwest Corner of the NW ¼ of Section 4 which includes Thomas and Ellen  
18 Matulis's property in 1897. The evidence in county records and pictures shows that R. W.  
19 Harding and others continued to drive the old Harding road even after R. W Harding and the  
20 Railroad bought up the land. No one petitioned to quiet the title on the 40 feet of OHR on  
21 Wallace Bacon's property until Wallace Bacon brought his action in court against Matulis'.  
22  
23 Therefore, our defenses stand, and our Affirmative defense stands, and we did nothing to defraud  
24 the Bacons. Wallace and Rosie Bacon lacked jurisdiction/standing to bring an action against us.  
25  
26 According to RCW 35.79 and 36.87.140 the Bacons should have petitioned the court to vacate

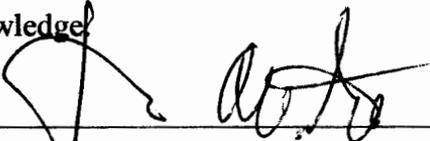
27  
28 **OPENING BRIEF OF DEFENDANT-APPELLANT**

P-12

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1 the land rather than unjustly accusing us of defrauding them and Inland Power & Light Co. and  
2 the court was prejudice for not allowing a continuance to put our arguments in writing if they  
3 were not going to listen to oral arguments. The court was prejudice when they awarded damages  
4 in treble to the Bacons' without any evidence to support their claim for damages. This complaint  
5 and Causes of Action against us is frivolous and without merit and is tantamount to fraud in and  
6 of itself. We disagree with Inland Power that they had a right to rely on us if they thought we  
7 misrepresented anything to them. They had a fiduciary responsibility to know whether or not  
8 their lines and power junction box were being placed on someone else's property legally and  
9 truth is; we had a right to rely on them not the other way around.  
10

11 We declare under penalty of perjury that the foregoing is true and correct to the best of  
12 our knowledge

13  
14 Signed:   
15 Thomas Matulis, Defendant/Appellant

14 Date: 8-2-17

16  
17 Signed: Ellen Matulis  
18 Ellen Matulis, Defendant/Appellant

17 Date: 8-2-17

19 The Defendants/Appellants ask the appeal court to consider the following legal questions:  
20

21 **LEGAL QUESTIONS**

- 22 (1) Did the Plaintiffs file a frivolous complaint?  
23 (2) Were the Defendants denied Due Process when the judge denied  
24 their continuance?  
25 (3) Did the Plaintiffs meet their burden of proof?  
26 (4) Did Inland Power & Light Co. have a responsibility to obtain an  
27 easement from Bacons prior to laying power lines on his property?

28 **OPENING BRIEF OF DEFENDANT-APPELLANT**

P-13

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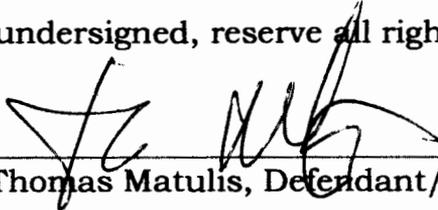
- 1 (5) Did the court grant a Summary Judgment without proof of the  
2 complaint?
- 3 (6) If the Defendants deny the charges in their Answers, are they re-  
4 quired to prove their innocence in writing?
- 5 (7) Can the court bar the Defendants from oral arguments if they do  
6 not respond in writing to a Motion for Summary Judgment?
- 7 (8) Do the rules of the court bar the Defendants from presenting wit-  
8 nesses at a hearing for Summary Judgment?
- 9 (9) Did the judge have discretionary power to grant the Defendants a  
10 continuance and, if so; did the Judge have a fiduciary duty to  
11 grant the Defendants' request for a continuance?
- 12 (10) Were the Defendants Inland Power & Light Co. and Centu-  
13 rylink obligated to prove their answers at the time that they an-  
14 swered?
- 15 (11) Do the rules of the court bar the defendants from presenting  
16 witnesses at the Summary Judgement hearing?
- 17 (12) What is the proper procedure for altering a Certified Verba-  
18 tim Report?
- 19 (13) Did it prejudice the Defendants for the Official Court Re-  
20 porter to alter the VRP at the behest of the Plaintiffs' attorney?
- 21 (14) Was it unethical for the Official Court Reporter to alter the  
22 original VRP that she sold to the Defendants without notifying the  
23 Defendants that she had changed the document that they had in  
24 their possession?
- 25 (15) Did the court have a fiduciary duty to ask Korina Kerbs to  
26 step down from the hearing of March 3, 2017 for Conflict of Inter-  
27 est?
- 28 (16) Did Korina Kerbs have a fiduciary duty to step down from the  
hearing held March 3, 2017 since she was the subject matter?

1 (17) Did Judge Cooney have a fiduciary duty to step down from  
2 the bench when he found out that the Defendants filed a complaint  
3 against him with the Judicial Commission?

4 (18) Was a complaint of fraud and damages the proper forum for  
5 Quieting a Title?

6 (19) Can it be legally deemed trespass when the Plaintiff had  
7 never posted signs or told the Defendants not to travel the OHR?

8 We, the undersigned, reserve all rights.

9 Signed:  \_\_\_\_\_  
10 Thomas Matulis, Defendant/Appellant

11 Date: 6-2-17

12 Signed: Ellen Matulis \_\_\_\_\_  
13 Ellen Matulis, Defendant/Appellant

14 Date: 6-2-17

# **EXHIBIT A**

MATULIS, THOMAS & ELLER M

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380429052

MATULIS, THOMAS 380429051

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SATTLER, FRANK N & JOYCE L

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380429030

VAUGHN, WANDA J

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STALEY SCOTT  
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380429020

REX C & WENDI T

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380519090

BACON, WALLACE

380519078

MOELLER, I O

380519089

SCATES, RYAN J

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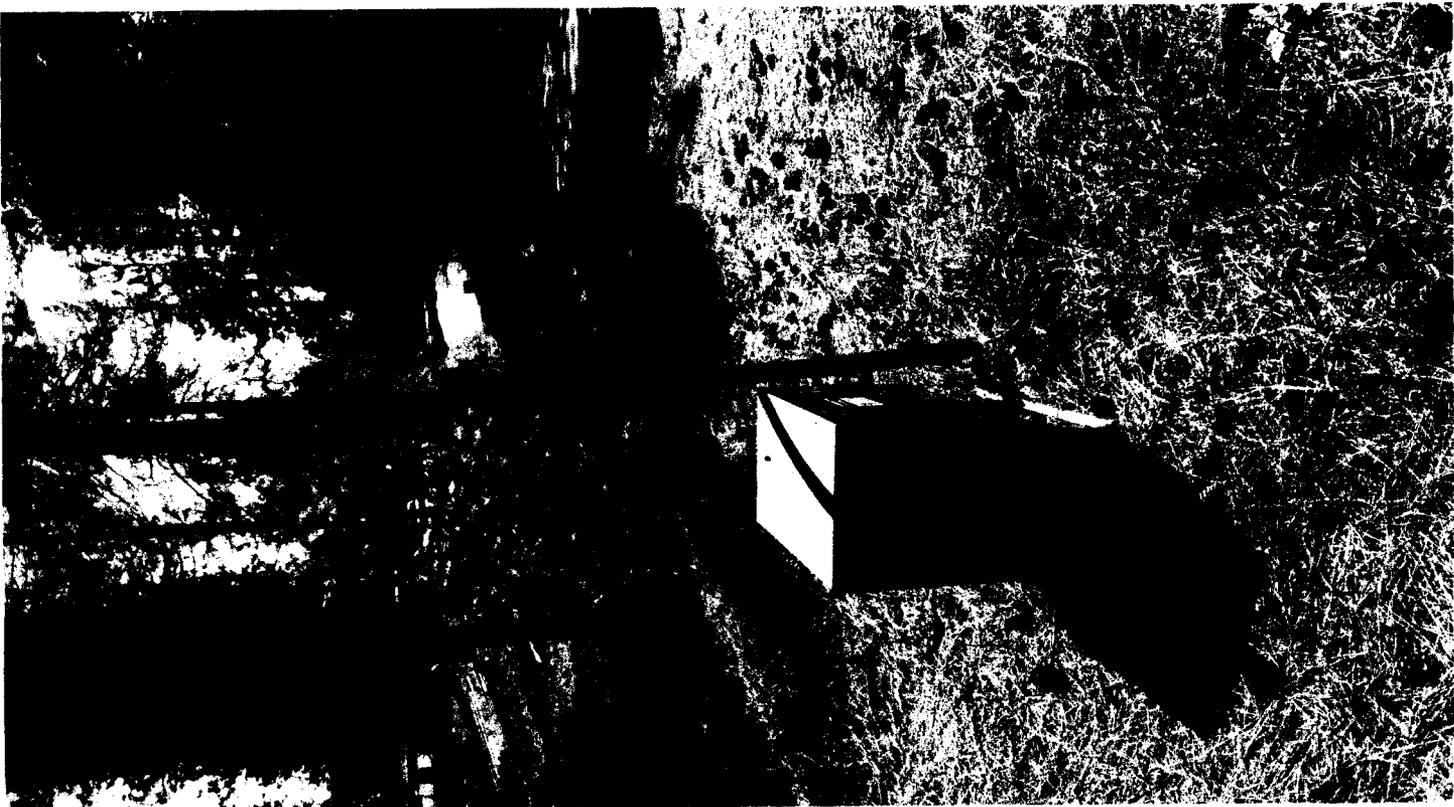
N Perry Rd

JAMES A & CAROL E  
80519081

# **EXHIBIT B**



# **EXHIBIT C**



# **EXHIBIT D**

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DD-76-A



# New Service Application

Application fee of \$150.00 is due with the submission of this application.

Physical Address  
10110 W Hallett Rd  
Spokane WA 99224

### Member Information

Work Order Number 401356

\* Name(s): ~~James~~ Marie Matulis Conroy Email Johansen509@gmail.com

Mailing Address  
PO Box A  
Spokane WA 99219

\* Address 1517 e. Deer Park - Milan Rd.

\* City Deer Park \* State WA \* Zip 99006

Phone (509) 747-7151  
FAX (509) 789-4229

\* Home Phone 509 276 8414 Work Phone \_\_\_\_\_ Cell Phone 509-209-0851

Have you ever received electric service from Inland Power before? Member # 5415001 Location 1517 e. Deer Park - Milan Rd.

Contractor Name Inland Power Phone Number 509 80 1677

\* Denotes required information

**Location of New Service** - Existing power is:  Overhead  Underground

New service will be:  Home  Manufactured Home  Shop/Garage  Other Greenhouse

\* Service Address: \_\_\_\_\_ \* City, State, Zip: Deer Park, WA 99006

\* IPL Number (3" metal numbers/letters) or Tax Parcel #: \_\_\_\_\_

Distant from nearest power source to site is \_\_\_\_\_ feet

**Load Information** -  Residential  Development - # of Lots 1  Commercial

Home Square Footage 7200 Service Size 400amps Amps (200 or 400)

Type of Heat:  Electric  Heat Pump - Size \_\_\_\_\_ Ton  Air Conditioner  Other Boiler

Additional Loads:  Well 3/4 HP  Shop \_\_\_\_\_ Amps

**Temporary Service**  Overhead  Underground  None

**Permanent Service**  Overhead  Underground

Date Required asap Date Required asap

**Change in Existing Service**

Upgrade  Relocate  Overhead to Underground  Other New

Comments I need a power run to property I own behind the lot I currently have service at.

I affirm that the above information is correct to the best of my knowledge. I understand that any changes I make could result in additional costs and delays in the installation of service. **The cost quote for this request expires six months from the date of the cost letter.**

APPLICANT SIGNATURE Marie Matulis Conroy APPLICATION DATE 3-10-14.

ENGINEER \_\_\_\_\_ APPOINTMENT DATE \_\_\_\_\_



## **New Service Application**

### **Right of Way Easement Instructions**

In order to prevent delays in scheduling your new service job and to avoid problems with recording your easement with the county, please read the following easement instructions.

- Do not alter or write in the margins.
- We cannot accept faxed, copied and emailed easements.
- For each easement, a copy of the recorded Statutory Warranty Deed, Deed of Trust, Quit Claim Deed or Schedule A Final Title Insurance Policy is required to show proof of property or ownership. These documents must include the tax parcel number and legal description of property.
- Please leave the legal description and parcel number blank; Inland Power and Light will complete this portion.
- Any attachments must have at least 1" margins on all four sides. Maps must be legible and not have any lines or dashes that cover the text. All fonts used must be legible.
- All legal property owners must sign the easement.
- The signatures must be notarized. (IPL has notaries available)
- Please inform your notary that the stamp must be legible and not placed over any part of the written document otherwise the county will not record the easement.

**Please note when printing the easement off our website, your easement will not be accepted if font is less than eight point, if any part of the text is not legible or if the margins do not meet recording specifications.**

Physical Address:  
10110 W Hallett Rd.  
Spokane, WA 99224

Mailing Address:  
PO Box A  
Spokane, WA 99219

Phone (509) 747-7151  
FAX (509) 789-4229

# **EXHIBIT E**



**PLEASE RETURN TO:**  
Inland Power & Light Co.  
10110 W Hallett Road  
Spokane WA 99224

FOR COUNTY RECORDING USE ONLY.

PLEASE **DO NOT** WRITE IN ABOVE SPACE.

Page 1 of 2

IPL Work Order # 401356

**RIGHT-OF-WAY EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned (hereinafter called "Grantor")

MATULIS, THOMAS

MATULIS, ELLEN, M

Last, first, middle initial

Last, first, middle initial

for mutual offsetting benefits which are hereby acknowledged, do hereby convey and grant to INLAND POWER & LIGHT CO., a Washington Corporation (hereinafter called "Grantee") and to its successors, assigns, or permittees, the right, privilege and authority, to install, alter, bury, rephase, energize, chemically treat, operate, move, maintain, and remove electric transmission and distribution facilities, consisting of poles, cables, wires, and all other necessary or convenient appurtenances, to make said facilities an integrated electric system, as such specifications now exist and as hereafter changed in accordance with specifications adopted by the Grantee, to the extent necessary to install and maintain said electric system, which is located upon, under, over, and across the following-described lands and/or in or upon all streets, roads, or highways abutting said lands and premises situated in the County of

SPOKANE State of WASHINGTON and more particularly described as follows:

Abbreviated legal description

04-28-43 PTN OF NW1/4 LYG N OF N LN OF DEER PARK-MILAN RD EXC E934 51' & EXC PTN DAF, BEG AT NW COR TH S787.54' TH E287.88' TH N TO PT 693 01' S OF N LN OF SEC TH E824.57' TH S TO N RW LN OF DEER PARK-MILAN RD TH SWLY ALG R/W LN TO W LN OF SEC TH N43 8 45 TO POB EXC RDS

Assessor's property tax parcel or account number 38042.9052

Grantee, its successors and assigns is also granted the right, privilege, and authority to clear cut 10 feet each side of an overhead conductor and/or cut, remove and trim trees, brush, shrubbery and other obstructions to the extent necessary to keep them clear of said electric line or system and to cut down from time to time all dead, weak, leaning or dangerous trees that are tall enough to strike the wires in falling, or the branches thereof, to chip and spread branches and other foliage and to pile stack logs as necessary alongside the cleared right-of-way; and to license, permit, or otherwise agree to the joint use or occupancy of the line or system by any other person, association or corporation, for electrification, telephone, or communication needs.

It is agreed that areas over buried vaults, cables, and within the right-of-way shall remain free and clear of structures, barriers, building, trees, shrubbery and/or any other physical encumbrances except by written consent of Grantee.

Free access to all facilities over the Grantors adjacent lands will be allowed at all times. Grantee shall not be responsible for loss, replacement or damage of any improvements or other things below, over or upon such easement necessitated by the Grantee's use of this easement

No monetary consideration or consideration of monetary value has been given for the rights conveyed. The undersigned WARRANT that they have the legal right to grant this easement and agree to hold harmless and to indemnify the Grantee for any damages suffered by Grantee should it later be proven that the Grantor did not possess such legal rights. Said lands are free of encumbrances except:

R E Excise Tax Exempt  
Date 4-7 2014  
Spokane County Treas  
By SH

PLEASE DO NOT WRITE IN ABOVE SPACE.  
Page 2 of 2

IPL Work Order # 401356

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 24 day of March, 2014

[Signature]  
Grantor's Signature

Ellen Marie Matulis  
Grantor's Signature

STATE OF Washington  
COUNTY OF Spokane } SS

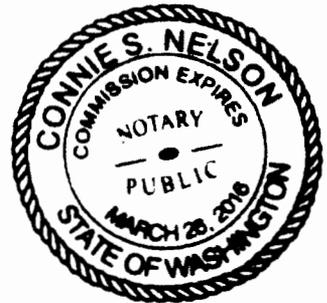
On this day personally appeared before me

MATULIS, THOMAS  
Grantor's Name/Printed

MATULIS, ELLEN, M  
Grantor's Name/Printed

to be known to be the individual described in and who executed the within forgoing instrument, and acknowledged that (Circle one) HE SHE THEY signed the same as (Circle one) HIS HER THEIR free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 24 day of March, 2014  
Notary Public Signature [Signature]  
Notary Public in and for the State of Washington residing at Spokane  
My commission expires 3-26-2016





**PLEASE RETURN TO:**  
Inland Power & Light Co.  
10110 W Hallett Road  
Spokane WA 99224

FOR COUNTY RECORDING USE ONLY.

PLEASE **DO NOT** WRITE IN ABOVE SPACE.

Page 1 of 2

IPL Work Order # 401356

### RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned (hereinafter called "Grantor")

MATULIS, THOMAS

Last, first, middle initial

Last, first, middle initial

for mutual offsetting benefits which are hereby acknowledged, do hereby convey and grant to INLAND POWER & LIGHT CO., a Washington Corporation (hereinafter called "Grantee") and to its successors, assigns, or permittees, the right, privilege and authority, to install, alter, bury, rephase, energize, chemically treat, operate, move, maintain, and remove electric transmission and distribution facilities, consisting of poles, cables, wires, and all other necessary or convenient appurtenances, to make said facilities an integrated electric system, as such specifications now exist and as hereafter changed in accordance with specifications adopted by the Grantee, to the extent necessary to install and maintain said electric system, which is located upon, under, over, and across the following-described lands and/or in or upon all streets, roads, or highways abutting said lands and premises situated in the County of

SPOKANE State of WASHINGTON and more particularly described as follows:

Abbreviated legal description

4-28-43 PTN OF NW1/4 DAF: BEG AT NW COR TH S693.01FT TH E2 87.86FT TO TRUE POB TH E824.57FT TH S TO NLY R/W LN OF DEER PARK MILAN RD TH SWLY ALG SD NLY R/W LN TO A PT 310.09FT W LY OF W LN SD NW1/4 TH N397.75FT TO TRUE POB

Assessor's property tax parcel or account number 38042.9051

Grantee, its successors and assigns is also granted the right, privilege, and authority to clear cut 10 feet each side of an overhead conductor and/or cut, remove and trim trees, brush, shrubbery and other obstructions to the extent necessary to keep them clear of said electric line or system and to cut down from time to time all dead, weak, leaning or dangerous trees that are tall enough to strike the wires in falling, or the branches thereof, to chip and spread branches and other foliage and to pile stack logs as necessary alongside the cleared right-of-way; and to license, permit, or otherwise agree to the joint use or occupancy of the line or system by any other person, association or corporation, for electrification, telephone, or communication needs.

It is agreed that areas over buried vaults, cables, and within the right-of-way shall remain free and clear of structures, barriers, building, trees, shrubbery and/or any other physical encumbrances except by written consent of Grantee.

Free access to all facilities over the Grantors adjacent lands will be allowed at all times. Grantee shall not be responsible for loss, replacement or damage of any improvements or other things below, over or upon such easement necessitated by the Grantee's use of this easement.

No monetary consideration or consideration of monetary value has been given for the rights conveyed. The undersigned WARRANT that they have the legal right to grant this easement and agree to hold harmless and to indemnify the Grantee for any damages suffered by Grantee should it later be proven that the Grantor did not possess such legal rights. Said lands are free of encumbrances except

R. E. Excise Tax Exempt

Date 4-7 2014

Spokane County Treas.

By SLC

PLEASE DO NOT WRITE IN ABOVE SPACE.

Page 2 of 2

IPL Work Order # 401356

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 24 day of March, 2014

[Signature]  
\_\_\_\_\_  
Grantor's Signature

\_\_\_\_\_  
Grantor's Signature

STATE OF Washington  
COUNTY OF Spokane } SS

On this day personally appeared before me

MATULIS, THOMAS  
\_\_\_\_\_  
Grantor's Name/Printed

\_\_\_\_\_  
Grantor's Name/Printed

to be known to be the individual described in and who executed the within foregoing instrument, and acknowledged that (Circle one) HE SHE THEY signed the same as (Circle one) HIS HER THEIR free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 24 day of March, 2014

Notary Public Signature [Signature]

Notary Public in and for the State of Washington residing at Spokane

My commission expires 3-26-2016



# **EXHIBIT F**

Locate Ticket # 14077649 |

under construction # 707,87307



Distribution Design  
Phone: (509) 747-7151  
Fax: (509)789-4229

Date: 3/21/14  
Work Order: 401356

Marie Cosgrove  
1517 E. Deer Park – Milan Rd.  
Deer Park, WA 99006

Dear: Ms. Cosgrove,

RE: Underground power line extension to pad mount transformer then into your 400 amp meter base.

As requested, a cost has been prepared by our Distribution Design department. The service will be 1 phase, 3 wire, 120/240 Volts to your 400 Amp main switch.

**COSTS:**

Inland Power & Light's construction charges for this project have been calculated at two options below. The amount must be paid in advance of construction. Please note that cash payments are not accepted on site. Quoted fees will be honored for (6) six months from the date of this letter.

Option 1: Underground from the existing pole nest to Deer Park – Milan Rd.

|                                   |                   |
|-----------------------------------|-------------------|
| Cost of line extension            | \$6,465.68        |
| Less Amounts Previously Paid      | \$150.00          |
| <b>Balance (Payment Required)</b> | <b>\$6,315.68</b> |

Option 2: Cut-in-line on ROW road located west of neighboring property.

|                                   |                   |
|-----------------------------------|-------------------|
| Cost of line extension            | \$7,954.80        |
| Less Amounts Previously Paid      | \$150.00          |
| <b>Balance (Payment Required)</b> | <b>\$7,804.80</b> |

If meter base is not ready at the time of transformer install, additional charges will apply.

This cost excludes charges for any other utility (telephone, gas, cable, etc.) They must be contacted separately to arrange for their services. You, the customer, are responsible for all ditching costs.

Costs may be revised if your proposal changes in any way or if the site conditions dictate a last minute redesign. The quoted Line Extension balance is based on work being performed during the normal construction season. Work requested during winter months may also be subject to additional fees.

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**CERTIFICATE OF SERVICE**

I, Thomas Matulis, certify that I delivered a copy of following document(s) to the parties listed below in the manner specified:

1. Response of Appellants' to Respondent's Brief Opposing Appellants' Motion for Narrative Report.

**U.S. Mail to:**

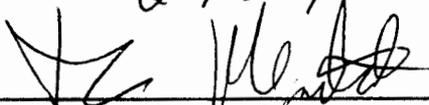
Clerk of the Court of Appeals Division III  
500 N. Cedar St.  
Spokane, WA 99201

J. Steve Jolley, Attorney for Wallace Bacon  
12340 E. Valleyway Ave.  
Spokane Valley, WA 99216

Randell & Danskin, Attorney's for Inland Power & Light Co.  
600 W. Riverside Ave.  
Spokane, WA 99201  
Fax#: 509-624-2528

**I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.**

**DATED:** 6/2/17 at Deer Park, Washington

  
\_\_\_\_\_  
Thomas Matulis, Defendant Sui Juris