

NO. 349390

COURT OF APPEALS STATE OF WASHINGTON

DIVISION THREE

DARLENE JEVNE,

Appellant/Cross-Appellee,

v.

THE PASS, LLC, a Washington limited liability company, d/b/a
The Pass Life, and BRYCE PHILLIPS and JANE DOE PHILLIPS,
husband and wife and their marital community,

Respondents/Cross-Appellants.

APPELLANT'S/CROSS-APPELLEE'S RESPONSE/REPLY BRIEF

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A. RESPONSE TO THE PASS, LLC'S STANDING ARGUMENT

I. Jevne Has Standing

- a. The trial court properly denied the Pass, LLC's 12(b)(6) lack of standing motion because Jevne established that she has a "present interest" in her HOA's assets which include an interest in Tract A, the HOA's drainage pond, upon dissolution or liquidation of the HOA as established by Jevne's HOA Articles of Incorporation and Washington's Supreme Court.

To avoid duplicating her argument in response to the Pass, LLC's standing argument, Jevne refers the Court, in part, to Jevne's Opening Brief, Sections E2 and E3. From Sections E2 and E3, it is clear that Jevne has an interest in the HOA's proceeds upon dissolution or liquidation as stated in the HOA's Articles of Incorporation. This interest is not contingent as the Pass, LLC suggests. It is a substantial and a "present interest" in the HOA's real property that was passed to Jevne with her real property acquisition of her home, Lot 31, in the Village as expressly provided in the HOA's Articles of Incorporation. CP 158 & 162.

In essence, the Pass, LLC argues that the liquidation or dissolution of Jevne's HOA is somehow so unforeseeable that it cannot give rise to a substantial, present interest. The Pass, LLC's argument plainly suggests that Jevne's HOA, or any other HOA in Washington State for that matter, would, rarely if ever, be faced with dissolution or liquidation. The Pass, LLC's argument is flawed because Washington State's legislature clearly took into

account the likelihood of nonprofit corporations, like Jevne's HOA, having to unwind or dissolve when it considered and enacted into law the Washington Nonprofit Corporation Act. Under RCW 24.03.220, Washington's legislature acknowledged that nonprofit corporations may need to dissolve. And, in the event of dissolution, the assets of the corporation, like Jevne's HOA, would be distributed pursuant to RCW 24.03.225 to members like Jevne. Because our legislature understood nonprofit corporation dissolutions are foreseeable, they made laws to address those foreseeable concerns. Moreover, Jevne's HOA's Articles of Incorporation state that the HOA may exercise powers granted to it under the Washington Nonprofit Corporations Act. CP 158. Therefore, the Pass, LLC's argument that Jevne's interest in the HOA's assets is so remote not to rise to a present interest is not reasonable.

II. The Trial Court Inferred Jevne's HOA Is The Owner Of Tract A

The trial court inferred that Jevne's HOA was the owner of Tract A. The only logical conclusion to make from the trial court's decision upholding Jevne's standing is that Jevne's HOA was the owner of Tract A pursuant to RCW 58.17.165, not Snoqualmie Summit Inn, Inc.

On appeal, however, the Pass, LLC continues to argue that the owner of Tract A is Snoqualmie Summit Inn, Inc. It appears from the record that the Pass, LLC is attempting to take advantage of the Kittitas County

Assessor's Office's failure to note on the county records the Homeowner's Association (HOA) designation in 1990 when the 1990 Plat was filed with the county. Tract A's ownership error went uncorrected for nearly 26 years. In early 2016, the error was caught by county officials who changed Tract A's ownership designation to the HOA as reflected on its official government's website which has gone unopposed by the Pass, LLC's *alleged owner*, Snoqualmie Summit Inn, Inc. to date.

Although the Pass, LLC argues that Snoqualmie Summit Inn, Inc. owns Tract A, it is interesting to note that the county never charged Snoqualmie Summit Inn, Inc. any taxes on the property as shown on the bottom of the county tax sifter. CP 152. From the tax sifter, it is fairly obvious that the county considers the pro-rata valuation of the Village's *improvements*, like Tract A, when the county sends out their yearly tax assessments to each of the HOA's homeowners, like Jevne. If Snoqualmie Summit Inn, Inc. really owns the *improvements*, like Tract A, then they should have been getting taxed for the value of all the improvements, including Tract A, which did not occur. In addition, if Snoqualmie Summit Inn, Inc. actually owned Tract A, for instance, then there is nothing to stop them from selling Tract A to a third party who could convert, theoretically, Tract A to a building site and force the HOA's owners to find another

location in which to drain their own stormwater. Obviously, this scenario would be in complete violation of the 1990 Plat's designed use of Tract A.

III. 1990 Plat Controls All Aspects Of Ownership And Use Of Tract A

Clearly, the 1990 Plat controls Tract A's ownership in this case.

From the plain meaning of the unambiguous Plat, the ownership resides with the Homeowner's Association. The Pass, LLC argues that only RCW 64.04.010 should be reviewed for real property transfers. The Pass, LLC argues that Tract A could only be transferred to the HOA by deed because a deed contains a notary seal.

In support of Jevne's HOA ownership claim, the Plat statute, RCW 58.17.165 provides that the designation of Tract A to the HOA on the first page of the Plat acts like a deed transfer under the statute. And contrary to the Pass, LLC's argument, the Plat documents *were* notarized by Snoqualmie Summit Inn, Inc.

IV. 1990 Plat With HOA Designation Was Notarized On Page Three

After close review of the third page of the Plat documents, it is clear that Snoqualmie Summit Inn, Inc. did sign its Plat ownership designations under seal of a notary public on March 6, 1990. CP 138-40. And, under close review, it becomes clear that all three pages of the 1990 Plat were intended to be notarized together by simply observing the page designations at the bottom of each page of the Plat which show the pages as "SHEET 1

OF 3 SHEETS”, “SHEET 2 OF 3 SHEETS”, AND SHEET 3 OF 3 SHEETS.” *Id.* There would be no reason to have a notary seal on each page of the Plat if the Plat intended there to be only one notary seal at the end of the document which it does. According to RCW 58.17.165, the dedication, donation, or grant as shown on the face of the Plat giving the HOA ownership in Tract A was notarized as indicated above. Therefore, the Pass, LLC’s argument that the first page of the Plat showing the HOA as the designated owner of Tract A was not notarized is incorrect.

V. Jevne’s Two “Present Interests” In Tract A

- a. Under the Washington’s Supreme Court decision in *Schroeder v. Meridian Improvement Club*, Jevne’s right to proceeds from the sale of the HOA’s real property in the event of liquidation or dissolution creates a “present interest” for Jevne which provides Jevne with standing.

Jevne has a present interest in Tract A pursuant to *Schroeder*. The Pass, LLC, however, argues that no attention should be given to the Washington State Supreme Court decision in *Schroeder, et al. v. Meridian Improvement Club* because it was only cited four times. The legal principle, however, set forth in *Schroeder* states that Jevne, as a member in good standing with her HOA, is entitled to a “present interest” in the HOA assets, including Tract A, the pond. Jevne can find no case suggesting that the “present interest” ruling in *Schroeder* would not apply to our case.

- b. Jevne's second "present interest" in Tract A is to protect the drainage component that is appurtenant to the purchase of her lot as depicted on the 1990 Plat.

As shown on the 1990 Plat, Tract A is an integral component to Jevne's drainage for her home in Division I of the Village at the Summit. When Jevne purchased her home in the Village, pursuant to the 1990 Plat, she was entitled to a drainage system, including Tract A, that was intended to protect her home from flood waters. Tract A assures that Jevne's home will not be flooded during heavy spring rains and snow water runoff. Without Tract A, Jevne's home is, arguably, worthless. Jevne's present interest in Tract A is to protect its integrity so that the value of Jevne's lot is never compromised as a result of unrestricted third party uses of Tract A.

In addition, it would be reasonable to assume that Kittitas County Assessor places a greater value on Jevne's home with Tract A working as opposed to if it were not working or compromised. The county's increased valuation with an uncompromised drainage system secures Jevne's valuation in her home and secures Jevne against unreasonable stress associated with a damaged drainage system that could damage Jevne's home during seasonal snow runoff and rains. It is reasonable to assume that Tract A was required to safeguard Jevne against flooding concerns otherwise there would have been no need to build Tract A for the Village residents, like Jevne.

B. RESPONSE TO THE PASS, LLC'S EVIDENCE EXCLUSION ARGUMENT

- a. Washington's Supreme Court makes it clear that if a plat is plainly stated and not subject to ambiguity, then only the language of the plat, including all of its marks and lines, will be used to determine the intention of the grantor.

Washington's Supreme Court has held that if a plat is not ambiguous, then the Court is to determine the grantor's intention by looking only at the plat with its marks and lines. Washington's Supreme Court makes it clear that "In construing a plat, the intention of the dedicator controls. *Frye v. King Cy.*, 151 Wn. 179, 182, 275 P. 547 (1929). That intention is to be determined from all the marks and lines appearing on the plat. 26 C.J.S. Dedication § 49, at 519 (1956). However, where the plat is ambiguous, surrounding circumstances may be considered to determine intention. 26 C.J.S., at 520. *See also Deaver v. Walla Walla Cy.*, 30 Wn.App. 97, 633 P.2d 90 (1981); *Camping Comm'n of Pac. Northwest Conf. of Methodist Church v. Ocean View Land, Inc.*, 70 Wn.2d 12, 421 P.2d 1021 (1966); *Cummins v. King Cy.*, 72 Wn.2d 624, 434 P.2d 588 (1967); *Rainier Ave. Corp. v. Seattle*, 80 Wn.2d 362, 494 P.2d 996 (1972); 2 G. Thompson, *Real Property* § 383 (Supp.1980)."

In addition, under Washington Supreme Court's decision in *Olson Land Co. v. City of Seattle*, the rule is well settled that:

"An official survey, map, or plat, or one which is duly filed or recorded in the proper office, is not subject to be contradicted, impeached, or invalidated by parol or other extrinsic evidence therefore, that the plat itself is the best evidence of the intention of the dedicators; and, unless such plat is uncertain or ambiguous, parol evidence cannot be heard to determine the intention of the dedicators."

See Olson Land Co. v. City of Seattle, 76 Wn. 142, 145-46, 135 P. 118 (1913).

To be certain about how drafter's intent is derived from any document, including covenants, contracts, and plats, Washington's Supreme Court has recently ruled as follows: ["Thus, our primary objective in contract interpretation is determining the drafter's intent. *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 696, 974 P.2d 836 (1999); *Riss*, 131 Wn.2d at 623, 934 P.2d 669; *Mains Farm*, 121 Wn.2d at 815, 854 P.2d 1072. "While interpretation of the covenant is a question of law, the drafter's intent is a question of fact." *Ross v. Bennett*, 148 Wn.App. 40, 49, 203 P.3d 383 (2009) (citing *Wimberly*, 136 Wn.App. at 336, 149 P.3d 402). "But where reasonable minds could reach but one conclusion, questions of fact may be determined as a matter of law." *Id.* at 49–50, 203 P.3d 383 (citing *Owen v. Burlington N. Santa Fe R.R.*, 153 Wn.2d 780, 788, 108 P.3d 1220 (2005)). In determining the drafter's intent, we give covenant language "its ordinary and common use" and will not construe a term in such a way "so as to defeat the plain and obvious meaning." *Mains*

Farm, 121 Wn.2d at 816, 854 P.2d 1072; *Riss*, 131 Wn.2d at 623, 934 P.2d 669. We examine the language of the restrictive covenant and consider the instrument in its entirety. *Hollis*, 137 Wn.2d at 694, 974 P.2d 836 (quoting *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 344, 883 P.2d 1383 (1994)). *Wimberly*, 136 Wn.App. at 336, 149 P.3d 402. The lack of an express term with the inclusion of other similar terms is evidence of the drafter's intent. See *Burton v. Douglas County*, 65 Wn.2d 619, 622, 399 P.2d 68 (1965). ("Extrinsic evidence is used to illuminate what was written, not what was intended to be written." *Hollis*, 137 Wn.2d at 697, 974 P.2d at 836. We, however, do not consider extrinsic evidence "that would vary, contradict or modify the written word" or "show an intention independent of the instrument." *Id.* at 695, 974 P.2d 836."]

I. Extrinsic Evidence Is Not Admissible When A Plat Is Not Ambiguous.

Even though Washington law strictly prohibits the use of parol evidence to contradict, modify or vary the plain language and meanings of the demarcations of a plat map, the Pass, LLC, nonetheless, almost exclusively relies on parol evidence to prop up their allegation that they have a right to direct their stormwater into Tract A, the pond, in any manner and in any location as they wish. The Pass, LLC's confused interpretation of the

1990 Plat, however, is contrary to the plain language on the face of the 1990 Plat. Because the Pass, LLC agrees that the Plat is plainly stated, the Plat is not ambiguous. Because the Plat is not ambiguous, then all of the extrinsic evidence offered by the Pass, LLC to interpret the meaning of the 1990 Plat, as a matter of law, is inadmissible.

- a. Marc K. Kirkpatrick's statements in his declaration are extrinsic evidence and not admissible under the parol evidence rule.

In his declaration, Mr. Kirkpatrick refers to documents other than the 1990 Plat including the following: 1) Group Four's Hydrology Report and Calculations; and 2) Group Four's Construction Plans. CP 390-425. From the extrinsic documents alone, Mr. Kirkpatrick formulates opinions that the grantor's underlying intent was that Tract A was supposed to be used in the complete development of Tract E. Mr. Kirkpatrick's opinions about using Tract A for Tract E's entire stormwater drainage uses are inconsistent and contrary to the plain language and demarcations set forth on the face of 1990 Plat. Because the Plat is not ambiguous, Mr. Kirkpatrick's declaration is based on inadmissible extrinsic evidence requiring the Court to strike Mr. Kirkpatrick's testimony and the underlying documents upon which he bases his opinions under the ruling in *Olson Land Co. v. City of Seattle* and the parol evidence rule and look to the plain language and marks on the 1990 Plat instead. Because the parties herein all agree that the Plat is clear and not

ambiguous, then there is no reason to include Mr. Kirkpatrick's statements and reports that he relied upon in formulating his opinions about the intent of the 1990 Plat because his statements are not being used to confirm information on the Plat as argued by the Pass, LLC. If a plat can provide adequate guidance to the reader, there should be no reason to entertain any other evidence to help the reader determine the correct meaning of the Plat.

The Pass, LLC argues that Mr. Kirkpatrick's declaration is used to show that Tract A was designed to be used for Tract E. Because the Plat is clear, there should be no reason to look to any source other than the 1990 Plat to determine how Tract E is to use Tract A. Clearly, from the Plat, Tract A has solid lines around it which means that Tract E cannot puncture any portion of Tract A's property line. Unfortunately for Jevne, this is exactly what was done by the Pass, LLC when it cut into Tract A with heavy equipment and installed a large drain pipe through the solid northern property line of Tract A. It is important to note that only the dashed easement lines depicted on the Plat were intended for Tract E's drainage use to Tract A which is very little use as opposed to the complete dumping of Tract E's entire five acre tract at the current time through a drain pipe that penetrated Tract A's northern property line as is depicted on the Pass, LLC's Encompass Plat map. CP 200. As a courtesy to the Court and for ease of reference, Jevne has attached both the 1990 Plat and the Pass, LLC's 2012

Encompass Plat map to show the different locations of the old and the new stormwater discharge locations into Tract A.

- b. Kittitas County Public Works Department official, Christina Wollman's, statements are inadmissible under both the parol evidence rule and the hearsay rule.

Similarly, statements made and documents relied upon by Kittitas County Public Works Department official, Christina Wollman, are inadmissible extrinsic evidence. CP 470-497. Ms. Wollman is making opinions about the intent of the 1990 Plat based on extrinsic evidence in violation of the parol evidence rule. For example, in her January 8 and 14, 2014 letters to Bryce Phillips, Ms. Wollman states, in part, the following:

"During the original review of the project, Tract E was included in the stormwater calculations and traffic impact analysis. With the inclusion into the stormwater calculations, it was intended that Tract E use the project's stormwater system. . ." CP 470, 473-75

In her April 17, 2014 letter to Kirk Holmes, Ms. Wollman stated, in part, the following:

"I've attached a letter sent to the developer of the Pass Life regarding . . . stormwater system, and an excerpt of the original stormwater plan . . . My research indicates that the original stormwater plan . . . included Tract E . . . Based on this information, Tract E was intended to use the stormwater system and detention pond." CP 472, 478-79.

In her April 18, 2014 letter to Cory Brandt, Ms. Wollman states, in part, the following:

"I am attaching the complete stormwater plan. The calculations are all included for your review. . . . The stormwater plan is based on the area to be impacted and developed, and not the plan for development (houses,

commercial, etc). The pond was required to be sized appropriately to handle the runoff from Tract E. . ." CP 477.

Because Ms. Wollman's letters are being used to contradict , modify, or vary the plain meaning of the Plat, Ms. Wollman's letter opinions and the documents upon which she relies in making those letter opinions are inadmissible extrinsic evidence under the ruling in *Olson Land Co. v. City of Seattle* and the parol evidence rule. Because the 1990 Plat is not ambiguous, Ms. Wollman's letters and her attached documents are inadmissible parol evidence requiring the Court to strike the evidence as inadmissible.

Washington's Supreme Court has held that the testimony from the county plat administrator regarding an intent that varied from the face of the plat is not admissible. See *Wilkinson v. Chiwawa Communities Association*, 180 Wn.2d 241, 250-51, 327 P.3d 614, 619 (2014); citing *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 696-97, 974 P.2d 836, (1999). In addition to being inadmissible extrinsic evidence, Ms Wollman's statements regarding the grantor's intent or the meaning of the 1990 Plat based on documents other than the plat itself constitute hearsay evidence and are to be stricken as inadmissible hearsay. ER 801.

- c. The Pass, LLC's submission of an inadmissible hearsay email from Snoqualmie Summit Inn, Inc. regarding permission was properly excluded.

The Pass, LLC is attempting to get into evidence an email drafted by Snoqualmie Summit Inn, Inc.'s officer, Mark Zenger, through the back door by couching their argument in terms of permission instead of ownership. CP 524, ¶ 6. As the Court should note from Jevne's HOA ownership arguments, supra, the Plat designated the HOA as the owner of Tract A and the Plat was notarized on page three. Since ownership of Tract A passed to the HOA, the Pass, LLC's claim that that Mr. Zenger's email is used to show permissive use is moot because Snoqualmie Summit Inn, Inc., being a non-owner of Tract A, cannot give permission to use property it no longer owns to the Pass, LLC. Clearly, Mr. Zenger's email is inadmissible hearsay, irrelevant, misleading, and prejudicial.

d. The Title Report Is Inadmissible Extrinsic Evidence.

The title report is extrinsic evidence which attempts to prove that Tract A's ownership is in Snoqualmie Summit Inn, Inc., not the Homeowner's Association as depicted on the face of the notarized Plat. Because the title report contradicts the HOA's clear ownership on the notarized Plat, the title report must be excluded as extrinsic evidence. Therefore, Jevne has met her burden of establishing that the trial court's admission of the title report was not reasonable.

C. RESPONSE TO THE PASS, LLC'S PRIVILEGE AND MANDATE TO USE TRACT A ARGUMENT

a. The Pass, LLC had no mandate or privilege to damage Tract A.

The 1990 Plat did not afford the Pass, LLC with the legal privilege, right, and obligation to dump all of Tract E's five acres of stormwater directly into a new drainage pipe that punctured the northern sidewall of Tract A. The new drainpipe is located outside of the clear drainage easement for Tract E's use as depicted on the Plat. In essence, the Pass, LLC argues that it is somehow lawfully entitled to circumvent the clear drainage easement area that was intended for its use provided on the Plat map. Because the Pass, LLC's use of Tract A is controlled by the Plat and because they had no legitimate permission to enter Tract A, the Pass, LLC, therefore, had no legal right, privilege, or obligation to invade and disturb Tract A with heavy equipment to install a large drainpipe.

b. The Pass, LLC confuses its use rights set forth in the Plat by arguing that it has lawful use rights to Tract A by having use rights to a common drainage ditch that leads to Tract A.

The Plat makes clear that Tract A is not owned in any way by Tract E. It is also clear that Jevne has a present ownership interest in Tract A through the HOA's Articles of Incorporation and the principles set forth in Washington's Supreme Court's decision in *Schroeder, et al. v. Meridian Improvement Club, supra*. It is Jevne's belief that because a drainage

easement exists for Tract E's limited drainage use only, the Pass, LLC somehow tricked itself into believing that it has lawful joint control and use over Tract A. To date, the Pass, LLC can show no legitimate document giving them any right to enter the pond and perform maintenance on it where that obligation was specifically given to the HOA in its bylaws. CP 52, ¶ 5.

- c. Jevne's exclusivity of ownership of Tract A, over the Pass, LLC, supports Jevne's damages claims of trespass, nuisance, and injunctive relief.

Because it cannot be shown that the Pass, LLC has any ownership or lawful entry rights into Tract A itself, as opposed to use rights in the common drainage ditch easement that leads to Tract A, then the Pass, LLC's argument that Jevne lacks exclusivity to protect Tract A from the Pass, LLC's unauthorized drainage invasion is without merit. Because the Pass, LLC has no ownership, joint control, or use rights to Tract A itself, Jevne is able to establish that she has exclusive possession of Tract A against any interest asserted by the Pass, LLC providing a basis for Jevne's trespass, nuisance, and injunctive relief claims. As argued, supra, Jevne purchased her home with an appurtenant drainage system, Tract A, depicted on a Plat to handle mountain snow runoff which provides Jevne with security from flooding and devaluation of her property.

- d. The Pass, LLC's argument that it must use Tract A as required by Washington law is misguided.

The Pass, LLC argues, at page 31 of its Opening Brief, that Washington law requires Tract E to use Tract A. Again, the Pass, LLC confuses its use of the common drainage easement with the use of Tract A which are two entirely different stormwater handling components set forth in the Plat. The 1990 Plat allows Tract E to drain its stormwater to the drainage easement at its historical manner and amount. The Plat details the specific drainage easement component with dashed easement lines. The Plat, however, clearly placed a barrier between Tract A and Tract E as depicted on the Plat with solid property lines between the two Tracts. The solid property line between Tract E and Tract A was a deliberate line that clearly was intended to separate Tract E's use from Tract A, unlike the dashed line that allows Tract E to drain directly to the drainage easement.

If the Plat intended Tract E to drain its stormwater directly to Tract A, then one would have expected the Plat to have a dashed easement line between Tract E and Tract A. Because no dashed line exists, it is clear that the grantor intended separation between the two Tracts and their respective drainage uses. Interestingly enough, Mr. Kirkpatrick did not elaborate why he thought the 1990 Plat would allow direct draining from Tract E into Tract

A even though he knew that there were no dashed easement boundary demarcations that would allow for direct draining on the Plat.

Clearly, the Pass, LLC has no authority over what happens to its stormwater once it enters the HOA's stormwater pond, Tract A. Where Jevne's HOA, on the other hand, has complete control over Tract A's water and the maintenance of Tract A itself. CP 52, ¶ 5.

It is clear that the Pass, LLC has ample property to use for its own drainage, as it is doing now, as pointed out by the Pass, LLC in its opening brief. The Pass, LLC, however, chooses to maximize their profits by building in drainage use areas of Tract A, instead of using their own property for drainage.

D. RESPONSE TO THE PASS, LLC'S NATURAL EXPANSION OF EASEMENT ARGUMENT

- a. The Pass, LLC confuses natural expansion of an easement with complete invasive entry into a new, non-easement area.

The Pass, LLC argues that its use of the easement depicted on the Plat was intended to grow naturally with development. The only problem with the Pass, LLC's argument is that it completely abandoned the stormwater drainage easement for a new drainage location significantly east of the common drainage easement for Tract E. The Pass, LLC cites *Logan v. Broderick*, 29 Wn.App. 796, 800, 631 P.2d 429 (1981) as its authority to puncture the middle of Tract A with its new stormwater drainage pipe. The

Pass, LLC's use of *Logan* is totally misguided because *Logan*, in essence, stood for the natural expansion of an easement road to accommodate increased traffic to a neighboring resort property. In *Logan*, the easement was not abandoned, but expanded through increased use. Unlike our case, the Pass, LLC's use of the drainage easement was not expanded with their development, but was abandoned for a more cost effective route in which to redirect their stormwater runoff.

- b. The Pass, LLC's new location for its stormwater discharge directly into Tract A instead of indirectly through the designated drainage easement constitutes unreasonable deviation, not reasonable use under *Logan v. Broderick*.

The Pass, LLC's abandonment of the Plat's drainage easement for a completely new drainage point does not constitute reasonable use under *Logan v. Broderick. Id.* In fact, under *Logan*, the Pass, LLC's complete abandonment of the drainage easement for a cheaper way to get rid of its stormwater is an unreasonable deviation. *Id.* In any event, the abandonment of the drainage easement for the cheaper discharge point into the middle of Tract A is a question of fact for the jury under *Logan. Id.*

E. RESPONSE TO THE PASS, LLC'S OVERBURDENING THE EASEMENT ARGUMENT

- a. The Pass, LLC is overburdening the easement by moving it to the middle of Tract A.

The Pass, LLC argues that Jevne cannot establish that the Pass, LLC is overburdening the existing easement at page 39 of their Opening Brief. The Pass, LLC's argument is most likely based on the fact that it has completely abandoned the drainage easement altogether and opted to install its drainage pipe in a completely new drainage location to dump its stormwater. The Pass, LLC's argument, however, is a double edge sword that cuts two ways. Either the new use of Tract A is to be considered 1) a rerouting of the existing easement outside of historical drainage use which violates the 1990 Plat, or 2) its new pipe installation is a complete abandonment of the easement for a more convenient and less expensive drainage site into the side of Tract A which, again, violates the 1990 Plat and Jevne's right to protect her interest in preserving Tract A's utility and value to her property.

F. RESPONSE TO THE PASS, LLC'S TRACT A OWNERSHIP ARGUMENT

- a. Ownership of tract A is crucial because no owner of Tract A gave the Pass, LLC permission to enter Tract A and place a stormwater drainpipe into it.

The Pass, LLC claims that ownership of Tract A is irrelevant at page 43 of their Opening Brief. Ownership, however, is very relevant because it goes to the heart of the Pass, LLC's case for permissive use of Tract A. Without permission, the Pass, LLC cannot enter into Tract A and place its

drainpipe into it regardless of what a county permit may say. From Jevne's briefing, it should be clear that ownership of Tract A resides entirely with the HOA as depicted in the 1990 Plat under a notary seal which specifically placed the ownership of Tract A with the Homeowner's Association. Outside of peripherally grabbing at possible paths to permission ranging from inadmissible extrinsic and hearsay evidence to inapplicable Washington State law regarding plat development, the Pass, LLC has not shown that the true owner of Tract A, the HOA, gave lawful permission to allow the Pass, LLC to enter Tract A for stormwater pipe installation and stormwater drainage. Although, the Pass, LLC's brief is replete with asserting that Snoqualmie Summit Inn, Inc. is the true owner of Tract A, the 1990 Plat provides otherwise upon close review of the 1990 Plat that actually was notarized on page three of the Plat document. Because the Pass, LLC's Opening Brief Appendix 1990 Plat document fails to show the Court the entirety of the Plat with the page designations, which incorporate the notary seal for the three page Plat, Jevne has provided that 1990 Plat showing the page designations as a courtesy to the Court.

- b. The Pass, LLC's use of Snoqualmie Summit Inn, Inc.'s alleged permission to get the county to issue a permit which would allow Tract E to use Tract A could only have occurred with fraud on the county by asserting that the Pass, LLC had permission from the owner of Tract A to use Tract A.

If the Pass, LLC used Snoqualmie Summit Inn, Inc.'s alleged permission to use Tract A, then an argument for fraud on the county arises. Clearly, if the county knew that the HOA was the actual owner of Tract A, then the county never would have issued a permit allowing the Pass, LLC to use fraudulent permission from Snoqualmie Summit Inn, Inc. to secure a county permit to dump drainage stormwater directly into Tract A.

G. RESPONSE TO THE PASS, LLC'S LUPA ARGUMENT

- a. Jevne's nuisance and trespass related claims are not barred by LUPA because RCW 36.70C.030 exempts Jevne's claims because they are based in damages.

RCW 36.70C.030 exempts Jevne's damages' claims from LUPA's appeal requirements. RCW 36.70C.030 subsection (1)(c) provides the following:

“(1) This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, except that this chapter does not apply to:

(c) Claims provided by any law for monetary damages or compensation. . .”

Jevne's nuisance and trespass related claims are based in monetary damages or compensation to remove the Pass, LLC's drainpipe and restore Tract A to its original condition. Jevne's damages claims are not intended to challenge any county permit. Jevne's claims, however, arise as a result of the Pass, LLC crossing onto Tract A and installing a drainage pipe

which creates Jevne's associated damages' claims. From the Pass, LLC's LUPA argument, the Pass, LLC would go so far as to state that if you left on vacation for six months and came back to your house and found that the neighboring property owner had built a county approved building on 100 feet of your land, then the building would be legal because you failed to appeal under LUPA even though the building constitutes trespass and nuisance based claims. Clearly, RCW 36.70C.030 subsection (1)(c) was created to protect innocent parties from overreaching land developers.

The Pass, LLC erroneously claims, at page 47 of their Opening Brief, that Jevne's damages actions must be brought "along with a Land Use Petition" in order to provide Jevne relief. The Pass, LLC's interpretation of LUPA's exemption under RCW 36.70C.030(1)(c) is not accurate and is misleading. The plain language of the exemption clearly allows for damages claims, like trespass, nuisance, and injunctive relief to be brought before the superior court without any reference to a LUPA challenge.

H. RESPONSE TO THE PASS, LLC'S INJUNCTIVE RELIEF ARGUMENT

- a. Jevne is entitled to injunctive relief to prevent the Pass, LLC from continuing to discharge their stormwater runoff into Tract A

Jevne's trespass and nuisance claims entitle Jevne to injunctive relief to deter the Pass, LLC from continuing to discharge their stormwater into Tract A. The Pass, LLC's drainpipe and stormwater discharges are trespass

and nuisance related actions that provide relief for both damages and injunction. In the case of *Mielke v. Yellowstone Pipeline Company*, 73 Wn.App. 621, 624, 870 P.2d 1005, 1006 (Div. III, 1994), the Court held “that an action for trespass exists when there is an intentional or negligent intrusion onto or into the property of another citing Restatement (Second) of Torts, §§ 158, 165, 166 (1965). This includes the misuse, overburdening or deviation from an existing easement. *See Hughes v. King Cty.*, 42 Wn.App. 776, 714 P.2d 316, *review denied*, 106 Wn.2d 1006 (1986); *Tatum v. R & R Cable, Inc.*, 30 Wn.App. 580, 636 P.2d 508 (1981), *review denied*, 97 Wn.2d 1007 (1982).”

Washington’s Supreme Court found water diversion onto a neighboring property to be a trespass in the case of *Phillips v. King County*, 136 Wn.2d 946, 957-58, 968 P.2d 871, 876-77 (1998) where they cited *Buxel v. King County*, 60 Wn.2d 404, 409, 374 P.2d 250 (1962) for the proposition that “in certain situations a county can be liable for the damages caused by the trespass of surface water across a plaintiff’s land, accomplishing thereby a taking of that property without compensation. Surface water is defined as vagrant or diffuse water produced by rain, melting snow or springs. *King County v. Boeing Co.*, 62 Wn.2d 545, 550, 384 P.2d 122 (1963). In *Boeing*, we reiterated that liability arises if surface water is artificially collected and discharged on

surrounding properties in a manner different from the natural flow of water onto those properties. *Boeing*, 62 Wn.2d at 550–51, 384 P.2d 122. Generally, municipal rights and liabilities as to surface waters are the same as those of private landowners within the city. 18A EUGENE McQUILLIN, LAW OF MUNICIPAL CORPORATIONS § 53.140, at 307 (3d ed.1993). In *Wilber Dev. Corp. v. Les Rowland Constr., Inc.*, 83 Wn.2d 871, 874–75, 523 P.2d 186 (1974), We concluded that if water is “collected and deposited upon the land in a different manner” than before development, the property owner may be entitled to damages. *Wilber*, 83 Wn.2d at 876, 523 P.2d 186. Many more recent cases have followed these rules and allowed damages when a municipality itself acts to collect surface water and channels it onto private property. *E.g.*, *Burton v. Douglas County*, 14 Wn.App. 151, 539 P.2d 97 (1975); *Hoover v. Pierce County*, 79 Wn.App. 427, 903 P.2d 464 (1995). In *DiBlasi v. City of Seattle*, 136 Wn.2d 865, 969 P.2d 10 (1998), we recently held that there may be liability on the part of a city for damages caused by water from a city street if the street acted to collect, concentrate and channel surface water onto private property in a manner different than the natural flow. *DiBlasi*, 136 Wn.2d at 879, 969 P.2d at 16.” Even though the *Phillips*’ case involved a municipality as a

defendant, *Phillips* made it clear that the same rules apply to private landowners like the Pass, LLC and Jevne.

Washington's Supreme Court found that injunctive relief is a proper remedy for preventing a party from diverting their water onto the property of another property owner in the case of *Alexander v. Muenscher*.

In *Alexander*, the Court stated the following:

“In 27 R.C.L. 1133, § 63, it is said: ‘It is well settled that a riparian owner whose rights are invaded by a wrongful diversion of the water naturally flowing through or by his premises is entitled to the preventive remedy of injunction, if seasonably invoked. * * *’”

Alexander v. Muenscher, 7 Wn.2d 557, 560, 110 P.2d 625, 626 (1941).

Although, *Alexander* is not an easement case, the proposition that one party cannot unlawfully divert naturally flowing water from one party's property onto the land belonging to another party is applicable to our case.

Since Jevne has an ownership right and present interest in Tract A, she is entitled to protect Tract A from the Pass, LLC's trespasses into it. Trespass is an action where Jevne has the right to remove the offending object, drainage pipe, doing the trespassing and stop its reoccurrence. In our case, the Pass, LLC's drainpipe not only is installed into Tract A where it is unlawfully placed; but, it is also continuously dumping all of Tract A's stormwater from Tract E's development constituting a continual trespass and nuisance. It has been proven that the Pass, LLC had no lawful authority,

through statute or permission, to enter Tract A and install its drainpipe. The unlawful entry and unlawful drainpipe installation constitute trespass and nuisance which provides a remedy of damages to pay for the removal of the drainpipe and a remedy of damages to repair the disturbed area. In addition, injunctive relief may issue if the Court deems it reasonable to prevent a party from unlawfully continuing to trespass or commit its ongoing nuisance. Jevne's position is that providing injunctive relief to Jevne will assure that the Pass, LLC removes its drainpipe and restores Tract A forthwith.

I. CONCLUSION

The 1990 Plat, under a notary seal, is the controlling document in this case that established that Jevne's HOA is the true owner of Tract A, the pond, under the plat statute, RCW 58.17.165. Darlene Jevne has standing to bring her damages based claims because she is a HOA member in good standing. The HOA's Articles of Incorporation provide that Jevne is entitled to a portion of the HOA's real property assets or asset sales proceeds upon dissolution or liquidation of the HOA providing Jevne with a real property interest to protect. In addition, Jevne has standing to defend her interests in Tract A because Tract A (a required drainage component for Jevne's lot) was appurtenant to her purchase of her home pursuant to the Plat. The Pass, LLC's drainage pipe and their stormwater drainage enter Tract A in a completely different location than is allowed in the 1990 Plat constituting

trespass, nuisance, and overburdening the existing drainage easement. Jevne's claims allow for damages and for injunctive relief. The Pass, LLC's trespass and nuisance is currently ongoing. The Land Use Petition Act ("LUPA") exempts Jevne's damages' claims from LUPA appeal application because Jevne's claims are based in damages. Kittitas County Public Works Department official, Christina Wollman's statement are inadmissible extrinsic evidence and constitute inadmissible hearsay and were properly excluded by the trial court. Snoqualmie Summit Inn, Inc.'s permission email is inadmissible hearsay and was properly excluded by the trial court. The Pass, LLC's First American Title Insurance Company's title report should be excluded as evidence because the report contradicts the HOA's ownership of Tract A in the 1990 Plat and, therefore, constitutes inadmissible extrinsic evidence. Moreover, the Pass, LLC's declaration of Marc K. Kirkpatrick is also inadmissible extrinsic evidence because it is based on reports and calculation paperwork that is not stated on the face of the 1990 Plat and attempts to provide additional information not contained on the Plat. The trial court erred by dismissing Jevne's case and denying Jevne's motion for reconsideration.

RESPECTFULLY SUBMITTED this 11th day of July, 2017.

A handwritten signature in blue ink, appearing to read "Matthew P. Veeder". The signature is fluid and cursive, written over a horizontal line.

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Appellee Darlene Jevne

Certificate of Service

I, Matthew P. Veeder, certify under penalty of perjury of the laws of the State of Washington that on July 11, 2017, I caused a copy of the document to which this is attached to be served on the following individual(s) via the methods indicated below:

Attorneys for Respondents/Cross-Appellants

Via Email and First Class U.S. Mail

Cairncross & Hempelmann, P.S.
Attn: Nancy Bainbridge Rogers
Nicole E. De Leon
Attorneys at Law
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323

DATED this 11th day of July, 2017, at Seattle, Washington.



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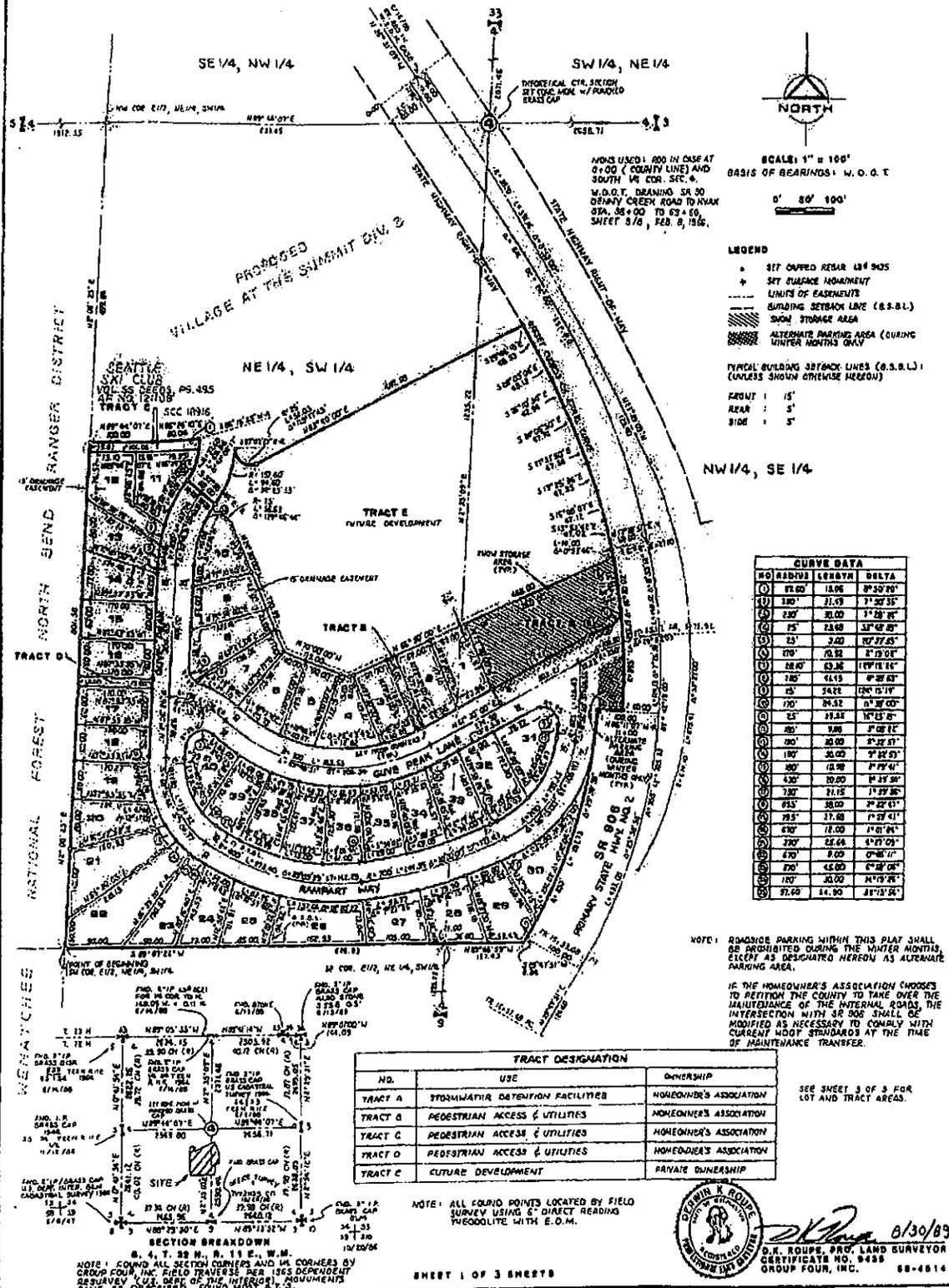
APPENDIX

VILLAGE AT THE SUMMIT DIV. 1

S 1/2 SEC. 4, TWP. 22 N., RGE. 11 E., W.M.

RECEIVING NO. 528340

KITITAS COUNTY, WASHINGTON



SCALE: 1" = 100'
BASIS OF BEARINGS: W.D.O.T.
0' 20' 100'

- LEGEND**
- SET CAPPED REBAR 18" NOS
 - SET SURFACE MONUMENT
 - LIMITS OF EASEMENTS
 - BUILDING SETBACK LINE (B.S.B.L.)
 - ▨ SHOW STORAGE AREA
 - ▨ ALTERNATE PARKING AREA (DURING WINTER MONTHS ONLY)
- TYPICAL BUILDING SETBACK LINES (B.S.B.L.):**
(UNLESS SHOWN OTHERWISE HEREON)
- FRONT : 15'
REAR : 5'
SIDE : 5'

NO.	RADIUS	LENGTH	DELTA
1	110.00	11.86	8°30'30"
2	110.00	21.51	17°00'30"
3	110.00	30.00	24°00'00"
4	110.00	36.76	30°00'00"
5	110.00	42.00	35°00'00"
6	110.00	45.96	39°00'00"
7	110.00	48.75	42°00'00"
8	110.00	50.40	44°00'00"
9	110.00	51.00	45°00'00"
10	110.00	50.60	44°00'00"
11	110.00	49.20	42°00'00"
12	110.00	46.96	39°00'00"
13	110.00	43.86	35°00'00"
14	110.00	39.96	30°00'00"
15	110.00	35.25	24°00'00"
16	110.00	30.76	17°00'30"
17	110.00	26.51	9°30'30"
18	110.00	22.50	0°00'00"
19	110.00	18.76	0°00'00"
20	110.00	15.25	0°00'00"
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NOTE: ROADSIDE PARKING WITHIN THIS PLAT SHALL BE PROHIBITED DURING THE WINTER MONTHS, EXCEPT AS DESIGNATED HEREON AS ALTERNATE PARKING AREA.

IF THE HOMEOWNER'S ASSOCIATION CHOOSES TO PERTAIN THE COUNTY TO TAKE OVER THE MAINTENANCE OF THE INTERNAL ROADS, THE INTERSECTION WITH SR 308 SHALL BE MODIFIED AS NECESSARY TO COMPLY WITH CURRENTLY ADOPTED STANDARDS AT THE TIME OF MAINTENANCE TRANSFER.

TRACT DESIGNATION		
NO.	USE	OWNERSHIP
TRACT A	STORMWATER DETENTION FACILITIES	HOMEOWNER'S ASSOCIATION
TRACT B	PEDESTRIAN ACCESS & UTILITIES	HOMEOWNER'S ASSOCIATION
TRACT C	PEDESTRIAN ACCESS & UTILITIES	HOMEOWNER'S ASSOCIATION
TRACT D	PEDESTRIAN ACCESS & UTILITIES	HOMEOWNER'S ASSOCIATION
TRACT E	CUTURE DEVELOPMENT	PRIVATE OWNERSHIP

SEE SHEET 3 OF 3 FOR LOT AND TRACT AREAS.

NOTE: ALL FOUND POINTS LOCATED BY FIELD SURVEY USING 6" DIRECT READING THEODOLITE WITH E.O.M.

8/30/03

D. H. ROOPS, PRO., LAND SURVEYOR
CERTIFICATE NO. 9488
GROUP FOUR, INC. 88-4614

VILLAGE AT THE SUMMIT DIV. 1

S 1/2 SEC. 4, TWP. 22 N., RGE. 11 E., W.M.

RECEIVING NO.: 528340

KITITAS COUNTY, WASHINGTON

DESCRIPTION

This plat of Village At The Summit Div. 1 embraces that portion of the W 1/2 of the NW 1/4 of the SE 1/4 and of the E 1/2 of the NE 1/4 of the SW 1/4 of Section 4, Township 22 North, Range 11 East, W.M., in Kittitas County, Washington, described as follows:

BEGINNING at the Southwest corner of said E 1/2 of the NE 1/4 of the SW 1/4; thence N2°06'25"E along the West line of said subdivision 801.58 feet to the Southwest corner of that certain tract conveyed to Seattle Ski Club by deed recorded in Volume 35 of Deeds, page 495, under Auditor's File No. 121108, Records of said County; thence N89°44'07"E along the South line of said tract 109.00 feet to the Southeast corner thereof, said corner also being the Southeast corner of that certain tract quieted in Seattle Ski Club by Judgment and Decree entered in Kittitas County Superior Court Cause No. 18918; thence N06°24'10"E along the South line of said last mentioned tract 80.08 feet to intersect the arc of a curve at a point from which the center line S06°16'55"W 97.50 feet distant, said point being the Southwest corner of said last mentioned tract; thence Southerly and Southwesterly along said curve to the right through a central angle of 41°04'17" an arc length of 59.96 feet; thence S52°38'44"E 60.00 feet to intersect the arc of a curve at a point from which the center line N52°38'44"W 157.50 feet distant; thence Northwesterly along said curve to the left through a central angle of 34°33'33" an arc length of 94.60 feet to a point of cusp and the beginning of a curve to the left the center of which bears S 81°02'17" E 35.00 feet distant; thence Southeasterly along said curve through a central angle of 119°17'42" an arc length of 51.05 feet to a point of tangency; thence N52°10'00"E 489.85 feet to intersect the West line of State Highway SR-805 (Primary State Highway No. 3) at a point on the chord of an offset spiral curve, said offset being 60.00 feet Westwardly of the centerline spiral curve; thence in a general Southerly direction along said highway right-of-way and chords of said offset spiral curve by the following courses and distances: S29°44'18"W 48.13 feet; S28°03'04"E 48.13 feet; thence S26°10'34"E 47.94 feet; S24°06'30"E 47.74 feet; S21°51'50"E 47.54 feet; S19°25'36"E 47.33 feet; S16°48'07"E 47.12 feet and S13°37'42"E 47.02 feet to a point opposite Highway Engineer's Station 2.C. P. 6+27.40 and the beginning of a curve to the right the center of which bears S77°28'51"W 893.00 feet distant; thence Southerly along said highway right-of-way and curve through a central angle of 16°20'02" an arc length of 255.15 feet to Highway Engineer's Station 11+00; thence N06°11'03"W 40.00 feet to intersect the West line of said highway at a point on a curve from which the center line S08°11'37"W 459.00 feet distant; thence Southerly and Southwesterly along said highway right-of-way and curve to the right through a central angle of 25°58'30" an arc length of 387.73 feet to a point of tangency at Highway Engineer's Station 11+33.00 P.T.; thence S19°47'31"W along said highway right-of-way to a point on the South line of said W 1/2 of the NW 1/4 of the SE 1/4; thence N89°44'59"W along the South line of said subdivision 127.43 feet to the Southeast corner of said E 1/2 of the NE 1/4 of the SW 1/4; thence S89°07'26"W along the South line of said last mentioned subdivision 618.93 feet to the POINT OF BEGINNING.

EASEMENT PROVISIONS

An easement shall be reserved for and herein granted to Snoqualmie Pass Sewer District (sewer and water), Cable TV, Puget Sound Power and Light Company, and Telephone Utilities of Washington serving subject plat and their respective successors and assigns, under and upon the exterior 7 feet parallel with and adjoining the street frontage of all lots in which to install, lay, construct, renew, operate and maintain underground conduits, cables, pipe, and wires with necessary facilities and other equipment for the purpose of serving this subdivision and other property with electric, telephone, and utility service together with the right to enter upon the lots at all times for the purposes herein stated.

RECORDING CERTIFICATE

Filed for record at the request of the Kittitas County Board of Commissioners, this 11th day of APRIL, A.D., 1990, at 11 minutes past 11:00 o'clock A.M., and recorded in Volume 8 of Plats, on page 48, Records of Kittitas County, Washington.

By D. J. ...
Deputy County Auditor

Barney G. Allenbaugh
Kittitas County Auditor

Receiving No. 528340

"KNOW ALL MEN BY THESE PRESENTS that this plat of Village At The Summit Div. 1, Kittitas County, Washington is subject to additional restrictions entitled CATERANITA BANK, which are filed with the Kittitas County Auditor and which are hereby made a part of this plat.

Dorcas J. ...
Deputy Auditor

"This is to certify that the above mentioned restrictions have been filed this 11th day of APRIL, A.D., 1990, at 11 minutes past 11:00 o'clock A.M., in Volume 8 of Deeds, on page 48, Records of Kittitas County, Washington.

Barney G. Allenbaugh
Kittitas County Auditor

APPROVALS

"EXAMINED AND APPROVED This 10th day of APRIL, A.D., 1990.
Barney G. Allenbaugh
Kittitas County Engineer

"I hereby certify that the plat of VILLAGE AT THE SUMMIT has been examined by me and find that it conforms to the comprehensive plan of the Kittitas County Planning Commission.

Dated this 10th day of April, A.D., 1990.
Barney G. Allenbaugh
Kittitas County Planning Director

"I hereby certify that the taxes and assessments are paid for the preceding years and for this year in which the plat is now to be filed.

Dated this 2nd day of April, A.D., 1990.
Barney G. Allenbaugh
Kittitas County Treasurer

"I hereby certify that the plat of Village At The Summit Div. 1 has been examined by me and I find that the sewage and water system herein shown do meet and comply with all requirements of the County Health Department.

Dated this 2nd day of April, A.D., 1990.
Barney G. Allenbaugh
Kittitas County Health Officer

"EXAMINED AND APPROVED This 2nd day of APRIL, A.D., 1990.
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Barney G. Allenbaugh
Acting Administrator, District No. 5

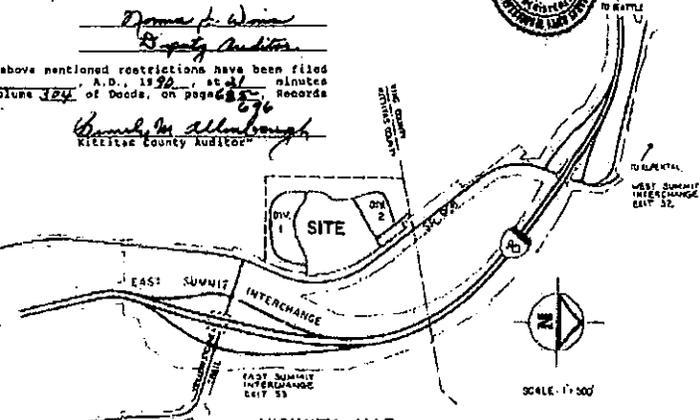
"EXAMINED AND APPROVED This 11 day of APRIL, A.D., 1990.
BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON
By Barney G. Allenbaugh
Clerk

ATTEST:
Barney G. Allenbaugh Clerk of the Board

LAND SURVEYOR'S CERTIFICATE

"I hereby certify that the plat of Village At The Summit Div. 1 is based on actual survey and subdivision of Section 4, Township 22 North, Range 11 East, W.M.; that the distances and courses and angles are shown thereon correctly; that the monuments have been set and lot and block corners marked on the ground.

Barney G. Allenbaugh
Licensed Land Surveyor
8/30/83



VICINITY MAP

VILLAGE AT THE SUMMIT DIV. 1

S1/2 SEC. 4, TWP. 22 N., RGE. 11 E., W.M.

RECEIVING NO.: 528340

KITTITAS COUNTY, WASHINGTON

DEDICATION

Know all men by these presents that SNOQUALMIE SUMMIT INN, INC.
AND WESTOP, INC. FORMERLY KNOWN AS NEW SNOQUALMIE SUMMIT INN, INC.

do hereby declare this plat and right to make all necessary slopes for cuts and fills, and the right to continue to drain said roads and ways over and across any lot or lots, where water might take a natural course, in the original reasonable grading of the roads and ways shown hereon.

Following original reasonable grading of roads and ways hereon no drainage water on any lot or lots shall be diverted or blocked from their natural course as so to discharge upon any public road rights-of-way, or to happen proper road drainage. Any enclosing of drainage waters in culverts or drains or rerouting thereof across any lot as may be undertaken by or for the owner of any lot, shall be done by and at the expense of such owner.

The costs of construction, maintaining and snow removal of all roads, streets, and alleys within this plat and all such roads to this plat shall be the obligation of a non-profit corporation composed of all the owners of the lots of the plat and of any additional plats that may be served by these roads, streets and alleys.

In the event that the owners of any of the lots of this plat or any additional plat shall petition the County Commissioners to include the roads in the county road system, it is understood that the roads shall first be built up to minimum county standards by said non-profit corporation.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 6TH day of MAY, A.D., 1990.

LOT NO.	SQUARE FOOTAGE	LOT NO.	SQUARE FOOTAGE
1	1,108 SF	41	11,773 SF
2	7,433 SF	42	14,307 SF
3	7,378 SF	43	6,233 SF
4	7,383 SF	44	7,704 SF
5	7,433 SF	45	7,371 SF
6	7,484 SF	46	11,146 SF
7	7,339 SF	47	7,333 SF
8	7,763 SF	48	4,419 SF
9	7,737 SF	49	3,111 SF
10	7,778 SF	50	5,432 SF
11	4,701 SF	51	3,185 SF
12	4,718 SF	52	3,178 SF
13	7,423 SF	53	6,654 SF
14	7,420 SF	54	7,775 SF
15	7,400 SF	55	7,355 SF
16	7,400 SF	56	7,440 SF
17	7,400 SF	57	7,434 SF
18	7,400 SF	58	7,430 SF
19	7,423 SF	59	7,411 SF
20	9,436 SF	60	7,184 SF

TRACT OR BLDG.	SQUARE FOOTAGE
A	2,500 SF
B	1,445 SF
C	1,706 SF
D	1,800 SF
E	281,324 SF

ROAD AREA 134,818 SF

SNOQUALMIE SUMMIT INN, INC.

BY: George S. Barber TITLE: PRESIDENT
BY: Mark G. Longa TITLE: SECRETARY

ACKNOWLEDGMENTS

"STATE OF WASHINGTON"
COUNTY OF SNOQUALMIE

On this 6TH day of MAY, A.D., 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared George S. Barber and Mark G. Longa, to be known to be the PRESIDENT and SECRETARY respectively of the SNOQUALMIE SUMMIT INN, INC. Corporation, and acknowledged the said instrument to be the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument and that the seal attached is the corporate seal of said Corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.



George S. Barber
Notary Public in and for the State of Washington, residing at Bellevue

WESTOP, INC. formerly known as NEW SNOQUALMIE SUMMIT INN, INC.

BY: Jerri L. Kronmal TITLE: PRESIDENT

"STATE OF WASHINGTON"
COUNTY OF SNOQUALMIE

On this 6TH day of MAY, A.D., 1990, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jerri L. Kronmal, to be known to be the PRESIDENT of the WESTOP, INC. Corporation, and acknowledged the said instrument to be the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.



George S. Barber
Notary Public in and for the State of Washington, residing at Bellevue

* FORMERLY KNOWN AS
SNOQUALMIE SUMMIT INN, INC.



8/30/07

8/30

July 11, 2017 - 10:54 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 34939-0
Appellate Court Case Title: Darlene Jevne v. The Pass, LLC, et al
Superior Court Case Number: 15-2-00352-9

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