

83937-9

No. 37981-3-II

SUPREME COURT
OF THE STATE OF WASHINGTON

JAMES R. CARY, MARY ALICE CARY, JOHN E. DIEHL,
and WILLIAM D. FOX, Sr.,

Appellants,

v.

MASON CONSERVATION DISTRICT,

Respondent,

and

MASON COUNTY,

Defendant.

BY RONALD R. AARPEREN
CLERK
2011 JAN -6 AM 6:28
STATE OF WASHINGTON
SUPERIOR COURT
SHELTON

ANSWER TO AMICUS BRIEFS
OF CONSERVATION COMMISSION, ASSOCIATION OF
CONSERVATION DISTRICTS, AND KING COUNTY

James R. Cary, pro se
Mary Alice Cary, pro se
636 Pointes Dr. W.
Shelton WA 98584
360-427-1488

John E. Diehl, pro se
679 Pointes Dr. W.
Shelton WA 98584
360-426-3709

William D. Fox, Sr., pro se
50 W. Sentry Dr.
Shelton WA 98584
360-426-1059

TABLE OF CONTENTS

I. The legislative determination that conservation programs are of special benefit to lands does not determine the validity of an ordinance ostensibly adopted under authority of the statute. 1

II. The levy at issue does not provide a special benefit substantially more intense to land subject to the levy than to other land. 3

 A. General public benefits do not comprise special benefits to property under a special assessment. 4

 B. Ordinance 121-02 fails to provide special benefits to parcels subject to the levy not provided to other property. 6

 C. The Interlocal Agreement fails to ensure any special benefits for the parcels subject to the levy. 10

III. The levy is a property tax, not any sort of regulatory fee. 16

 A. Given the authority by which it was adopted, the levy should be judged as a special assessment. 17

 B. Even if the levy had been adopted as a burden offset fee, it would not satisfy the requirements of such fees. 17

IV. Conclusion 19

Declaration of Service 21

TABLE OF AUTHORITIES

Table of Cases

Bellevue Associates v. City of Bellevue, 109 Wn.2d 671 (1987) 2, 5

City of Seattle v. Rogers Clothing, 114 Wn.2d 213, 787 P.2d 39 (1990)
..... 5

Covell v. City of Seattle, 127 Wn.2d 874, 905 P.2d 324 (1995) . . . 2, 3, 6,
11, 14

| | |
|---|--------------|
| <i>Heavens v. King County Rural Library Dist.</i> , 66 Wn.2d 558 (1965) . . . | 2, 5 |
| <i>King County Fire Protection Dist. 16 v. Housing Auth.</i> , 123 Wn.2d 819, 872 P.2d 516 (1994) | 2 |
| <i>Mithen v. Board of Trustees of Cent. Wash. State College</i> , 23 Wn. App. 925, 599 P.2d 8 (1979) | 1 |
| <i>Pierce County v. Taxpayers of Lakes Dist.</i> , 70 Wn.2d 375, 423 P.2d 67 (1967) | 4 |
| <i>Samis Land Co. v. Soap Lake</i> , 143 Wn.2d 798 (2001) | 11 |
| <i>Storedahl Props. v. Clark County</i> , 143 Wn. App. 489 (2008) | 18 |
| <i>Teter v. Clark County</i> , 104 Wn.2d 227, 704 P.2d 1171(1985) | 19 |
| <i>Thurston County Rental Owners Ass'n v. Thurston County</i> , 85 Wn.App. 171, 931 P.2d 208 (1997) | 4 |
| <i>Tukwila Sch. Dist. No. 406 v. City of Tukwila</i> | 18 |
| Statutes | |
| RCW 89.08.185 | 14 |
| RCW 89.08.400 | 1, 2, 17, 19 |
| Other Authorities | |
| 14 E. McQuillin, MUNICIPAL CORPORATIONS 38.11 (3d rev. ed. 1987) . . . | 5 |
| C. Rhyne, MUNICIPAL LAW 29-3 (1957) | 5 |

If Mason County ("County") Ordinance 121-02 ("Ordinance") imposed a valid special assessment, then by definition it represents a promise to provide special benefits substantially more intense to those parcels assessed than to parcels not assessed. It is not enough that it confers public benefits or benefits to only some of the parcels subject to the levy. The special benefits conferred must not amount to an illusory promise, i.e., one which according to its terms makes performance optional with the promisor. See *Mithen v. Board of Trustees of Cent. Wash. State College*, 23 Wn. App. 925, 932, 599 P.2d 8 (1979).

I. The legislative determination that conservation programs are of special benefit to lands does not determine the validity of an ordinance ostensibly adopted under authority of the statute.

Notwithstanding its amicus brief before the Court of Appeals contending that the Ordinance was invalid because of its failure to comply with the enabling statute, the Conservation Commission, now joined by King County and the Washington Association of Conservation Districts, contends that the Ordinance is valid, focusing on what it calls "the Legislature's finding that conservation programs specially benefit land." Commission brief at 8; King County brief at 10-11; Association brief at 13-14.

Although RCW 89.08.400(1) states that activities and programs to

conserve natural resources "are declared to be of special benefit to lands and may be used as the basis upon which special assessments are imposed," the statute does not declare that any ordinance adopted that purports to comply with the statute actually does so. Nor does the statute assert that conserving natural resources on the lands of a few beneficiaries constitutes a benefit for every parcel subject to the levy under a locally-adopted assessment. To predetermine compliance with the statute is obviously not a legislative function, and there is no evidence that the Legislature intended to limit judicial review of statutory compliance.

The key issues before this court are whether Ordinance 121-02 complies with RCW 89.08.400, and whether it satisfies the definitional test for any valid special assessment, viz., that it must provide a special benefit appurtenant to specific land subject to the levy "substantially more intense" than is conferred on other property in the jurisdiction that is not subject to the levy. *Bellevue Associates v. City of Bellevue*, 109 Wn.2d 671, 674-75 (1987); *Covell v. City of Seattle*, 127 Wn.2d 874, 889, 905 P.2d 324 (1995); *King County Fire Protection Dist. 16 v. Housing Auth.*, 123 Wn.2d 819, 834, 872 P.2d 516 (1994); *Heavens v. King County Rural Library Dist.* ("Heavens"),

66 Wn.2d 558, 563 (1965).¹ The statute by itself cannot resolve this question.

II. The levy at issue does not provide a special benefit substantially more intense to land subject to the levy than to other land.

The original purpose of the levy at issue was, in the words of the chair of the Conservation District, "to provide basic funding for the Mason County Department of Health and the Mason Conservation District." CP 59. The County's share was to be spent "to ensure basic public health for Mason County residents and visitors." CP 109. The levy was conceived, as one county commissioner put it, as "a way to deal with a thorny budget problem." CP 112. Under these circumstances, it is not surprising that the levy was not designed to confer special benefits to property subject to it.²

¹ Without citing any of appellants' pleadings, the Conservation Commission alleges that appellants "claim that it is impermissible that properties not assessed, including those outside the conservation district, might benefit from the stormwater management and erosion control activities that results [sic] in cleaning up Puget Sound." Brief at 10. Appellants make no such claim. They claim only that if the benefits conferred by activities funded by the special assessment apply as much to property not subject to the levy as to property subject to the levy, or are limited to a fraction of the assessed property, then the levy does not qualify as a special assessment, and is instead an unconstitutional property tax.

² This context also explains why *Covell's* distinction between taxes and what are characterized as "regulatory fees" has played a large role in prior consideration of the constitutionality of Ordinance 121-02. Although Appellants recognized from the outset that the levy purported to be a special assessment, they have used the *Covell* case to show that the levy, which does not satisfy the requirements of a special assessment, is a tax.

A. General public benefits do not comprise special benefits to property under a special assessment.

The Commission brief argues that general benefits of stormwater management programs confer special benefits on assessed property. The Commission points to the possibility of indirect benefits, to benefits that might be conferred if and when property is developed, and to the possibility of benefits accruing over a period of years. Commission brief at 12-13. Yet, the Ordinance on its face and associated finding of facts do not identify any benefits showing that parcels subject to the levy will receive special benefits distinguishing property subject to the assessment from other property.

Admittedly, to show invalidity of the ordinance, appellants have the burden of showing that the County's enactment was improper. *Thurston County Rental Owners Ass'n v. Thurston County*, 85 Wn.App. 171, 180, 931 P.2d 208 (1997). Still, when a special assessment is levied it is incumbent on the authority imposing the levy to specify sufficiently the benefits to be financed by the assessment so that those on whom it is imposed may have timely notice allowing a legal challenge to the action imposing the levy, if the specified benefits do not appear to qualify the levy as a special assessment. The benefit to the land must not be merely speculative or conjectural. *Pierce County v. Taxpayers of Lakes Dist.*, 70 Wn.2d 375, 378,

423 P.2d 67 (1967), citing *Heavens*, 66 Wn.2d at 563. There must be an actual, physical, and material benefit to the land. *Bellevue Associates v. City of Bellevue*, 109 Wn.2d at 674-75, citing *Heavens*, 66 Wn.2d at 563.

Even though this court has allowed as "special benefits" such targeted services as beautification and marketing, the declaration of what local improvements are to be provided "must not be made arbitrarily or unreasonably, or **without reference to the benefits to be provided.**" See *City of Seattle v. Rogers Clothing*, 114 Wn.2d 213, 224, 787 P.2d 39 (1990), citing 14 E. McQuillin, MUNICIPAL CORPORATIONS 38.11, at 78 (3d rev. ed. 1987) and C. Rhyne, MUNICIPAL LAW 29-3, at 717 (1957); emphasis added. But Ordinance 121-02 makes no reference to the benefits to be provided in such a way that a land owner might determine whether his land will receive special benefits that were not to be conferred on land exempt from the levy. The services provided were not targeted so that those paying for them would be assured of having them available for their land, and the general benefits conferred extended to land that was not subject to the levy.

Contrary to the very concept of a special assessment, the Commission argues that general benefits or the mere possibility of special benefits is enough to validate a special assessment. The Commission overlooks a key

feature of special assessments that distinguish them from levies intended to promote the general welfare. Even if a levy provided a benefit at least as great as the amount of the levy to all land within a jurisdiction, and even if the levy were imposed on all land within the jurisdiction, it would not qualify as a special assessment if the benefits conferred were general and connected with regular governmental functions, and not focused on the parcels subject to the levy. Since the benefits ascribed to Ordinance 121-02 are primarily general services deemed in the public interest, as distinct from the particular benefits conferred by user fees such as special assessments, the levy at issue would fail as a special assessment even if every parcel were deemed to benefit. Otherwise, as this court explained in *Covell* (127 Wn.2d at 888), the distinction between taxes and user fees would be lost, allowing what are now considered taxes to be transmuted into constituent parts, e.g., a 'police fee.'

B. Ordinance 121-02 fails to provide special benefits to parcels subject to the levy not provided to other property.

The Conservation Commission asserts that a generalized benefit to the public does not invalidate a special assessment. Appellants agree. However, Ordinance 121-02 on its face fails to provide any special benefit to all the parcels subject to the special assessment. In adopting the Ordinance, the Mason County Board of Commissioners made no effort to

ensure that the special assessments imposed would provide "substantially more intense" benefits to property subject to the levy than to other property in the jurisdiction.

The county commissioners used ten findings of fact to try to justify the levy adopted through Ordinance 101-02.³ Most of these refer to general public benefits that would accrue to land not subject to the assessment as much as to land subject to the assessment. In some cases, the finding does not even pertain to any benefit ascribed to any land, but to benefits to "the residents of Mason County" (finding #1), to programs to be provided to "the community" (finding #5), to "increased response" to "citizen concerns in all areas of the county" (finding #3), and to activities supposed to serve the "public interest" (findings # 4, 6, 8, and 10).

Of the ten findings, only three allow for the possibility that special benefits might be conferred on some property subject to the levy. Even these "possibilities" are illusory, for it is optional as to whether they will be provided to any particular parcel. Finding #2 asserts that the levy "will provide increased protection of drinking water from non-point source pollution sources." Yet, it does not promise that whatever activities are

³ The "finding of fact" is appended to both the Conservation Commission's amicus brief and Mason Conservation District's brief.

undertaken will provide increased protection to drinking water at each of the parcels subject to the levy or even to any particular parcel(s).

If the validity of a special assessment depends upon it providing special benefits substantially more intense to property subject to the assessment than to property exempt or excluded from the assessment, then any ordinance imposing the assessment needs to specify a benefit that property owners may perceive as being conferred on their property. Merely aiming to provide increased protection to drinking water in the county does not assure a benefit to any assessed parcel.

Three of the four appellants own land at a planned community called "Hartstene Pointe," which has its own wells and its own regulations to ensure that the wells remain free of pollution. The findings accompanying Ordinance 121-02 do not suggest any need for additional protection for appellants' water sources, nor even hint at any activities that would be aimed at protecting the wells on which the appellants rely. If some other property receives increased protection of its drinking water, this would be a special benefit to that property, but not to owners of land at Hartstene Pointe.

Finding #7 asserts that property values "are enhanced when there is greater confidence in safe drinking water and surface water." Yet, to the

extent that this is true of property at Hartstene Pointe, which is subject to the special assessment, it is also true of property in the City of Shelton, which is not subject to the special assessment. So, findings #2 and #7 do not support any claim that the special assessment at issue will provide a special benefit substantially more intense for properties on which it is imposed than on those not subject to it.

The only other finding, #9, holds out the possibility that some parcels subject to the assessment and where there is "severe water quality degradation" might get help through projects funded by a combination of assessment revenues and "matching funds" from unspecified sources. But no property is promised a project, and obviously properties not experiencing "severe water quality degradation," which include most properties paying the levy, would not be eligible to get any special benefit of this sort.

Thus, while the Board of Commissioners may have been attempting to raise money for a purpose that would serve the "public interest," there is no evidence that the parcels on which the special assessment is imposed will receive any special benefit. The lack of such an identifiable special benefit, substantially greater than whatever benefits may be conferred on the public at large, invalidates the levy as a special assessment.

C. The Interlocal Agreement fails to ensure any special benefits for the parcels subject to the levy.

The Association of Conservation Districts attempts to salvage the levy by reference to the Interlocal Agreement between Mason County and the Mason Conservation District. Association brief at 5-6. However, this agreement, adopted more than six months after the original complaint in this lawsuit was served, fails to validate the levy.

First, the Interlocal Agreement cannot be used to show that Ordinance 121-02 is facially valid or constitutional, for the Ordinance ensures none of the benefits described in the Interlocal Agreement. If the Ordinance is not facially valid and constitutional, then no evidence as to its application will make it valid.

Second, even if the Interlocal Agreement could be viewed as having been part of the Ordinance at the time it was challenged, it is insufficient to show that special benefits, substantially more intense than any conferred on parcels not subject to the levy, would be conferred on all parcels subject to the levy. The Interlocal Agreement listed a variety of services, but failed to identify any that any particular parcel might be assured of receiving. The agreement only promises various services to the extent that funds allow, but without any assurance that funds would allow such services to be extended

to every parcel subject to the levy. So, the notion of a special assessment as a user fee that promises a benefit in return for the fee paid, is ignored. It is not enough to identify a service that could potentially be received someday. See *Covell*, 127 Wn.2d at 879 (“service received by those who pay the fee”) (emphasis added); *Samis Land Co. v. Soap Lake*, 143 Wn.2d 798, 813, n.52 (2001).

Some services, such as development of farm plans, would cost much more than would be paid by owners of the parcels receiving these benefits, which means that those parcels would receive benefits subsidized by revenues from other parcels that might receive no benefits. No land owner, however many parcels he might own, could be assured of receiving service beneficial to even one of his parcels. Plainly, if he received no services, the benefits he received would not equal in value the amount he paid in assessments on his properties. Indeed, given that some of the services are too costly to be funded by the assessment paid by a single owner, some owners would inevitably be 'short-changed' by this scheme.

The Interlocal Agreement promised that the County would perform dye testing of septic systems of assessed parcels within the district “which are reasonably believed to pose a high priority health hazard to other

assessed parcels within the district.” CP 103. Yet, this is not a benefit to be enjoyed by every parcel assessed, nor a promise that even one parcel would receive such a service. Similarly, the agreement provided for limited “ambient water quality monitoring of lakes, rivers, streams, and groundwater under, nearby, or adjacent to parcels subject to the Assessment and investigation if the monitoring identifies potential pollutants.” Id. But this provision is not a direct benefit to any parcel, does not assure monitoring on or near any particular parcel, and does not ensure any cleanup even if pollutants are identified.

The Interlocal Agreement also provided, “consistent with budgetary limitations,” that the County “may help” with “restoration plans” if sewer or water lines break on parcels subject to the assessment. Id. While this could be a benefit to parcels so affected, it is not a service or improvement actually received, but at most one that could potentially be received someday. With similar conditional limits, the County is to “help with site remediation” where a parcel is deemed to “have a high likelihood of becoming contaminated” and poses a “high priority health and environmental hazard.” Id. Depending on the amount and kind of “help,” which is unspecified, this could be a considerable boon. Yet, this did not constitute a promise that any

particular parcel would receive help, and is at most a benefit that could potentially be received someday.

The County used its share of the levy to make up shortfalls, so far as possible, in funding for programs partly funded from other sources. The County evidently has been using its share primarily to address water quality problems in parts of Puget Sound and Hood Canal. CP 125-126. Monies from the Conservation Assessment were combined with grants from the Department of Ecology and Department of Health. *Id.* These efforts may have served the public interest, but obviously did not provide any direct benefits to most assessed parcels, particularly those distant from these marine environments. The mingling of funds collected from the levy with other funds used for broad public purposes marks the levy as a tax, not a special assessment.

The Conservation District has also spent most of its revenues from the assessment in ways that cannot be said to benefit individual parcels. The District's financial records show that the revenues were actually spent to pay personnel and to provide equipment for broad-based programs aimed generally at addressing broad public goals, not to provide special benefits to each parcel charged. For example, \$3,595.96 out of \$4,074.57 in assessment

revenues spent in October 2006 went to salaries and benefits for personnel. CP 114. Of the amount that went for personnel, \$2,957.25, or 82%, went for administration. This percentage was also the average for that year through October. CP 114-124. Thus, most of the funds collected were spent on administration, and apparently for administration of whatever programs were deemed in need of funding. Contrary to the second *Covell* factor, requiring that money collected must be allocated **only** to the authorized regulatory purpose, levy revenues were spent for administration of all District services, "available without charge to District residents." CP 109.

The programs may have provided broad public benefits, and in a few cases, such as development of farm plans, provided services directly beneficial to certain parcels. But the parcels within the City of Shelton, which opted (under RCW 89.08.185) to leave the Conservation District after the Conservation Assessment was adopted, and where parcels consequently are not charged the levy, have received as much – and as little – benefit from the funds collected as have the parcels owned by appellants and others paying the levy. Similarly, the owners of forest land have benefited as much as owners of non-forested parcels. Yet, under the current contract between the County and the Conservation District, owners of property within the City

of Shelton, Classified or Designated Forestland, Current Use Timber, Federally owned property, and "Government held trust land for Indians" are all exempt. CP 113. The revenues were spent for programs that failed to confer any special benefit on most of the parcels taxed.

Not only are the benefits to parcels not assured, for the most part the money would not be spent to benefit property, as distinct from property owners. The agreement provided that the County would provide "educational opportunities," including answering questions and investigating complaints by property owners subject to the 'assessment.' CP 103. Where requested by ten assessed landowners, and where the County "reasonably believes that twenty landowners will be in attendance," the County would provide "a workshop on protection of groundwater and surface water." Id. But these are not direct benefits to the parcels charged.

Under the Interlocal Agreement, both the County and the Conservation District were allowed to use levy revenues to match grant monies to provide programs or activities for "the conservation, protection or enhancement of soil or water resources and which provide a special benefit to parcels which are assessed." CP 104. Of course, state and federal grants are intended to provide a public benefit, not a special benefit substantially

more intense for certain parcels. This comingling of funds is inconsistent with dedicating revenues to provide special benefits to assessed parcels, essential to the levy being a special assessment instead of a tax.

In sum, although the Interlocal Agreement between the County and the District purports to provide financial support for work to specially benefit assessed parcel owners, it promises no direct and special benefit to any parcel, and no benefits appurtenant to assessed land that are substantially more intense than benefits to land not subject to the levy. Because the benefits were generally contingent on "budgetary limitations" (CP 103-104) and might be terminated at any time by mutual agreement of the County and District (CP 105), they were optional, and as such were illusory promises.

III. The levy is a property tax, not any sort of regulatory fee.

Ordinance 121-02 imposes compulsory payments that do not bear any direct relationship to the benefits of government goods and services received. It imposes a levy on property simply by virtue of ownership of property, conspicuously to raise revenues for the County and Conservation District, without any promise of improvements appurtenant to that property or special benefits conferred on that property. As such, it has all the earmarks of an invalid property tax, levied in disregard of the constitutional requirement that

property taxes be on an ad valorem basis.⁴

A. Given the authority by which it was adopted, the levy should be judged as a special assessment.

Citizens are entitled to know the basis for their government's action when that action is taken. The issue before this court is not whether Mason County might have raised money for a stormwater control program under other statutory authority, but whether the particular statute unambiguously invoked by the County when it adopted Ordinance 121-02 provides authority for the levy adopted. In RCW 89.08.400, the Legislature authorized only "special assessments," by this name referring 29 times to the levies so authorized. It should be assumed that the Legislature said what it meant.

B. Even if the levy had been adopted as a burden offset fee, it would not satisfy the requirements of such fees.

Ordinance 121-02 imposes a flat fee on every parcel not exempted, without regard to whether the parcel is developed or vacant (unless it is forest land), whether the parcel discharges stormwater in ways that cause problems, or whether sewage or septic effluent from the parcel has

⁴ This is not to say that any ordinance adopted under RCW 89.08.400 would be an unconstitutional property tax. Plaintiffs do not "in reality" challenge the constitutionality of the statute, contrary to King County's brief at 8 and Association of Conservation Districts' brief at 10. But a valid local ordinance needs to comply with the statute, and this means, among other things, ensuring that special benefits are conferred on all parcels subject to the special assessment.

contaminated or threatens to contaminate surface water or ground water. In other words, it is a fee charged without regard for any actual burden created. Moreover, the amount any taxpayer is obliged to pay depends only on the number of parcels he owns, not the size of the parcels or the total amount of land owned. The fee charged is not even roughly proportionate to the burden imposed. Thus, the levy would not be a valid burden offset fee, even if adopted as such.

The Conservation Commission misunderstands appellants' argument. Appellants did not argue that "the conservation assessment must be proportional to the burden the property places on the system." Commission brief at 11. Rather, appellants argued that if the levy were to be construed as a regulatory fee or burden offset fee for stormwater management, then such a fee would need to be roughly proportional to the burden imposed by the land subject to the fee, pointing out that where courts have upheld such fees, as in *Storedahl Props. v. Clark County*, 143 Wn. App. 489 (2008) and *Tukwila Sch. Dist. No. 406 v. City of Tukwila*, 140 Wn.App. 734, 167 P.3d 1167 (2007), they have done so only where the fees varied according to the services furnished, the benefits received, and the character, use and stormwater runoff characteristics of the land. Appellants' PETITION FOR

REVIEW at 11.⁵ Because the County's levy was not designed to be in any way proportional to the stormwater burden created by the parcels subject to the levy, the fee would not be a valid regulatory fee even if the RCW 89.08.400 authorized a regulatory fee for stormwater management.

IV. Conclusion

Neither the County in its original findings, nor the Court of Appeals in reversing the decision of the trial court, identified any special benefit distinguishing the benefits received by parcels subject to the levy from parcels not subject to the levy. Consequently, this court should conclude that the Ordinance did not create a valid special assessment.

Ultimately, the questions of whether special benefits are conferred on assessed property and whether these are substantially more intense than any that may be conferred on excluded property or on the public in general are questions of fact. The trial court in this case concluded that there were no issues of material fact and that there is no direct relationship between Mason

⁵ The same may be said of the fee at issue in *Teter v. Clark County*, 104 Wn.2d 227, 704 P.2d 1171(1985), where, notwithstanding the District's misrepresentation of the fee as a "flat, per parcel charge," the fees were actually "based on varying intensities of use and the relationship of that use to surface and subsurface water collection. Owners of all single family residence lots pay the same rate; owners of lots with more impervious surface (industrial, commercial) are charged more, depending on the size of the lot." *Teter* at 237.

County's levy and any services provided or between the fee charged and any burden produced by parcel owners. If this court were now to determine that there are genuine issues of material fact, then summary judgment in favor of appellants should not be granted, and the factual issue(s) should be remanded to the trial court for trial. However, if the trial court was correct in holding that the operable facts were not in dispute, then this court may agree that the levy created by the Ordinance did not confer the kind of benefits to assessed property essential to be considered a special assessment. If the levy is not really a special assessment, then it is invalid, and amounts to an unconstitutional property tax, and the revenues improperly obtained from it should be returned to the property owners who paid them.

Dated: January 5, 2011

Mary Alice Cary by James R. Cary
Mary Alice Cary, pro se
636 Pointes Dr. W.
Shelton WA 98584
360-427-1488
with her permission

James R. Cary
James R. Cary, pro se
636 Pointes Dr. W.
Shelton WA 98584
360-427-1488

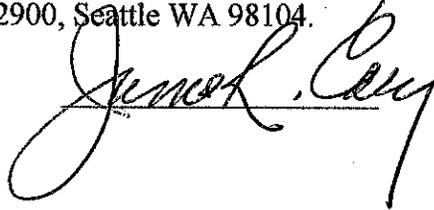
William D. Fox, Sr. by John E. Diehl
William D. Fox, Sr., pro se *with his permission*
190 W. Sentry Dr.
Shelton WA 98584
360-426-1059

John E. Diehl
John E. Diehl pro se
679 Pointes Dr. W.
Shelton WA 98584
360-426-3709

Declaration of Service

I, James R. Cary, under penalty of perjury under the laws of the State of Washington, declare that on this day, I mailed, postage prepaid, and/or faxed the above Petition for Review to the offices of Monty Cobb, Deputy Prosecuting Attorney, P.O. Box 639, Shelton WA 98584; Matthew B. Edwards, Owens Davies PS, 1115 W. Bay Dr. NW, Suite 302, Olympia WA 98502; Richard M. Stephens, 11100 NE 8th St., Suite 750, Bellevue 98004; William C. Severson, 1001 Fourth Ave., Suite 4400, Seattle WA 98154; Phyllis J. Barney, P.O. Box 40117, Olympia WA 98504-0117; Joseph B. Rochelle, 516 3rd Ave., Suite W400, Seattle WA 98104; and Jessica A. Skelton, 925 Fourth Ave., Suite 2900, Seattle WA 98104.

Dated: January 5, 2011

A handwritten signature in cursive script that reads "James R. Cary". The signature is written in black ink and is positioned to the right of the date. A horizontal line is drawn across the signature, likely to indicate where the signature should be placed on a document.