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Supreme Court Case No. 89533-3

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Court of Appeals Div. I Case No. 68618-6-I

SUPREME COURT OF WASHINGTON

CRYSTAL RIDGE HOMEOWNERS ASSOCIATION, a Washington
nonprofit corporation; J. ABULTZ, et al.,

Respondents,

vs.

CITY OF BOTHELL, a municipal corporation,

Petitioner.

RESPONDENTS' SUPPLEMENTAL BRIEF

Karen A. Willie, WSBA #15902
Email: kwilliw@tmdwlaw.com
Bradley E. Neunzig, WSBA #22365
Email: bneunzig@tmdwlaw.com
TERRELL MARSHALL DUADT & WILLIE PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 350-3528

Attorneys for Respondents

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INTRODUCTION

This case presents a simple legal issue: Whether an interceptor pipe installed in a residential development was conveyed to the County in 1987. Both the Superior Court and the Court of Appeals answered this question with an emphatic “yes,” finding platting statutes that expressly conveyed “drainage easements” to the County and testimony from the two engineers that installed the pipe proved that the interceptor pipe was conveyed to the County and the County had a duty to maintain it.

Petitioner’s primary argument on appeal is that the scope of the easement does not include the interceptor pipe because the conveyance is limited to “stormwater facilities,” which Petitioner asserts do not include pipes that carry groundwater. Petitioner is wrong. The plat language and markings as well as relevant statutes demonstrate that the easement’s scope includes “subsurface” flows.¹ If accepted, Petitioner’s argument would nullify the plat language and markings on the plat in derogation of well-settled law interpreting plats.

In its petition for review, Petitioner argues for the first time that if the Court of Appeals ruling is allowed to stand it would constitute an unconstitutional gifting of public funds.² This argument rests entirely upon Petitioner’s erroneous assertion that the interceptor pipe’s function is solely private in nature. The interceptor pipe conveys regional subsurface

¹ In finding on behalf of the Respondents, the Court of Appeals in part relied upon an older version of the Snohomish County Code §25.02.080, where more restrictive language was used.

² The Respondent maintains its position that this argument is not properly before this Court and violates RAP 2.5.

flows from a half mile away which include leaking municipal storm drains and water pipes. It protects public streets both within and outside of the plat and protects a regional sanitary sewer line that is in the same trench as the pipe. Respondent's constitutional argument lacks a factual or legal basis and should be rejected.

II. RELEVANT FACTS

A. **The Interceptor Pipe Was Dedicated to the City of Bothell and the "Scope" of the "Drainage Easement" Had to Include the Interceptor Pipe Because It Is the Only Drainage Feature in the Drainage Easement**

Crystal Ridge would eventually contain more than eighty houses which currently pay property taxes and surface water fees to the City. Admittedly, it was difficult land to develop and make commercially useful. As the City notes, the Hearing Examiner's decision states that a "[k]ey element" for development would be the control of "surface runoff and subsurface seepage." CP 698. The subsurface flows came from properties more than a half mile away and included uphill leaking municipal stormwater pipes and water pipes. CP 292, 296-297. Capturing these subsurface flows, especially the municipal ones, provided a benefit to the County.

The developer paid for the interceptor pipe that was laid twelve feet deep in Tract 999 and it was one of the first drainage features installed on the site. CP 727 (condition E.ii.) The regional sanitary sewer main was placed in the same trench. The interceptor pipe supports the regional sanitary sewer pipe. CP 292. From the record, it is apparent that the

Developer and the County embarked together in solving a regional subsurface water problem which also enabled a regional sanitary sewer system to be built not only for the benefit of Crystal Ridge but also for all of its uphill neighbors. Although the Developer built the interceptor pipe, he conveyed the maintenance responsibility to the County through the platting process, explained below. The partnering of the Developer and the County makes economic sense as does entrusting the maintenance of the interceptor pipe in the future to the County rather than to a homeowner's association.³

The plat for Division 2, where the interceptor pipe is, was approved for acceptance by the County's Director of Public Works, the Director of Community Planning and Development and the Chairman of the County Council in October and November of 1987 through their signatures on the plat. CP 654. It was filed of record by the Auditor of Snohomish County on November 10, 1987. *Id.* Under RCW 58.17.020, all of the drainage easements on this plat were "accepted" by the County twenty-seven years ago with that filing.

The recorded plats for Division 1 and Division 2 of Crystal Ridge have a total of 22 "drainage easements" called out on them which were highlighted in yellow for ease of reading. CP 655-659; 661-662. The longest and widest drainage easement, where the interceptor pipe is, extends the entire western edge of Division 2. It is labelled "Tract 999"

³ Oftentimes, homeowner associations are very cost conscious in decision making.

and is designated as “open space.” This easement traverses behind twenty of the homes in Division 2. *Id.* (lots 7-23; 35-38). It is not on any “individual” lot and Tract 999 cannot be sold.⁴ The other easements contain lateral pipes, surface water catch basins, surface water ditches and there are three retention detention ponds that hold surface waters.⁵ Some of the waters in the ponds were ground waters captured at the edge of the development by the interceptor pipe. *Id.*

The dedication legend that appears in three places on the two plats makes no distinction between the various “drainage easements.” It simply states:

Drainage easements designated on this plat are hereby reserved for and granted to Snohomish County for the right of ingress and egress for the purpose of maintaining and operating stormwater facilities.

Id.

The City refuses to look at the language on the plats that says “drainage easements” were conveyed. It points instead to the words “stormwater facilities” claiming that the use of those words does not

⁴ The Disclosure the City claims applies to Tract 999 specifically states it applies to “individual lots.” CP 472. Crystal Ridge will not be reiterating its arguments concerning the Disclosure in this Supplemental Brief. However, it submitted the irrefutable testimony of Dr. Denby who was there at the time the Disclosure was required and who explained the purpose of it was to alert new families buying there that they may need additional drainage on their private lots. CP 297. The Court of Appeals agreed this interpretation was the “far more plausible, common sense interpretation.” *Crystal Ridge Homeowners Ass'n v. City of Bothell*, 175 Wash. App. 1047 (2013) review granted, 89533-3, 2014 WL 928975 (Wash. Mar. 5, 2014).

⁵ The details of the interceptor pipe, lateral pipes, catch basins, ditches and retention detention ponds are not included on the plats for lack of room to do so. .

include subsurface ground water and therefore the interceptor pipe is somehow not in a dedicated “drainage easement.” Its analysis does not comport with the facts and is illogical.

Ted Trepanier is the engineer that designed the drainage features in Division 2 and prepared both of the plats for recording. CP 809. He testified that the entire system on Division 2 with the interceptor pipe, lateral pipes and the retention detention facilities are “drainage facilities.” CP 292. He noted that the only “drainage feature” in Tract 999 is the interceptor pipe. CP 291. Absent the pipe, there would be no “drainage easement” called out at that location on the plat. *Id.* The interceptor pipe is irrefutably in Tract 999 since Dr. Denby saw it installed there. CP 296. Therefore the “drainage easement” is irrefutably called out on the plat where the interceptor pipe is located. The legend conveys all “drainage easements” with no distinctions between the types of instrumentalities that are in the drainage easements. The “scope” of the easement therefore had to include the interceptor pipe.

B. The County’s Ordinances and Its Hearing Examiner Addressed Subsurface Flows and Public Streets Are Protected by the Interceptor Pipe

1. The County Code Referenced Subsurface Flows

The City and WSAMA ignore the references in Snohomish County’s contemporaneous ordinances that refer to the necessity to address subsurface water in the development process. The legislative findings section of the County’s drainage code provides: “that inadequate

surface and subsurface drainage planning and practices lead to erosion and property damage and risk to life.” CP 667 (SCC 24.04.040(d)). It provides that a “Detailed Drainage Plan shall include the following information with respect to surface and pertinent subsurface water flows....” CP 679 (SCC 24.16.160)). The project description is to include: “Location of springs or other subsurface water outlets.” CP 679 (SCC 24.16.160 (h)). The background computations for sizing “drainage facilities” states that: “For subsurface waters entering property indicate method of estimating quantity for design purposes.” CP 680 (SCC 24.16.160 (2)(a)). The County’s Procedures Manual reiterates this requirement. CP 370.

2. The County Hearing Examiner Referenced Subsurface Flows

The Hearing Examiner approved Crystal Ridge subject to the groundwater conditions being addressed. CP 724 (Conclusion 1); CP 726 (condition C). He deemed the most “critical issue” to be the “subsurface and surface drainage.” CP 724 (Conclusion 6). Crystal Ridge’s drainage plan was to include the interception of “sub-surface water.” CP 727 (condition E.ii). It was noted that these sub-surface waters were to be captured so they would not interfere with “downslope owners.” *Id.* Addressing the regional sub-surface flows was an integral part of the development process for Crystal Ridge. The assertions made by the City and WSAMA that sub-surface waters were not part of the development process are in error.

3. The Interceptor Pipe Protects Public Streets Outside the Plats

The City's and WSAMA's theory that only the streets within the plats are protected is off-point and also in error. The streets within the plat are public streets and protecting them is a public function, especially for emergency vehicle access. However, according to Engineer Trepanier, who designed Division 2, the interceptor pipe also protects downslope properties and streets outside the plat. CP 292.⁶ He was not the only contemporaneous engineer with that opinion. CP 296.

In a Memorandum dated October 1, 1984 to the Hearing Examiner, a County engineer, Don Davis, set out that impacts to offsite properties and a City street were ameliorated by use of the interceptor pipe. CP 465. The memorandum discusses the second geotechnical report that Dr. Denby did for the section of the plat that would become Division 2 which is where the pipe is. It states that the report was very thorough and that with the "proper controls" (which obviously would have included the interceptor pipe), the plat can be developed without any adverse impacts to "the properties downslope and on 9th Avenue S.E." *Id.* Dr. Denby testified that without the pipe, seepage would exit on the slope and flow offsite down to 9th Avenue S.E. CP 296. The interceptor pipe has not and is not solely serving private property. It fits the description in the

⁶ Again, it is regional in nature and its unlikely private citizens would properly maintain it.

County's Procedures Manual of property that it assumed via easements.

CP 439.⁷

C. Crystal Ridge Addressed Flows Beyond Those Its Development Caused Therefore the Interceptor Pipe Cannot Be Solely Private

The City and WSAMA both wrongly assert that the Court of Appeals' decision constitutes an unconstitutional gifting of public funds. WSAMA erroneously asserts that the waters addressed by the interceptor pipe were only those created by the development. To the contrary, the interceptor pipe controls groundwater flows that emanate from a half a mile away which includes leaking municipal storm drains, leaking municipal waterlines and, at the time, failing septic systems from upland development. CP 296; 791 (Hearing Examiner's finding no. 8). Engineer Trepanier testified that he sized the rectangular pond at Crystal Ridge to contain these additional off-site flows. CP 811. From this testimony it is clear that the size of the rectangular pond is greater because it contains not only the flows from the development of the site itself but also the subsurface regional flows coming into it. The interceptor pipe cannot be conveying flows that originate on the Crystal Ridge site. It is capturing flows before they get to the site and that is why it is located at the most westerly point of Division 2. CP 655-659; 661-662. Thus, it cannot be mitigating only development flows.

⁷ The City has argued that not all of the requirements of the Procedures Manual and SCC 24.28.040 were followed because it lacks paperwork showing a cost accounting.

D. The Scope of This Case Is Very Narrow

Finally, the City and WSAMA raise a hue and cry that if the City has to fix the interceptor pipe, it will place cities and counties afoul of the Constitution and in a financially precarious position. First, it is obvious from the Hearing Examiner's report that this pipe is an unusual feature applied to a unique development. CP 698. The geology of the area, explained by Dr. Denby, dictated that these subsurface regional flows be addressed. CP 303, 304. The City has not indicated that there are any other homeowner owner associations in its jurisdiction where an interceptor pipe was dedicated to either of the counties that are its predecessors in interest (Snohomish and King County).

To the contrary, the City has indicated to this Court that there are no cases involving similar facts or French Drains in the entire state of Washington.⁸ Based on the rarity of these facts, it argues that this case is one of first impression. *Id.* If facts involving French Drains are as scarce as hen's teeth, then there cannot be an abundance of similar situations in this State.

It should also be noted that Crystal Ridge is an old plat permitted in 1987. There have been large storm events since 1990, most notably during the holiday season of 1996. In the case cited by the City, it stated that Yakima County was designated a federal disaster area four times since 1990 and the flood in 1996 was described as a "near disaster" in

⁸ See Petition for Review to the Supreme Court of the State of Washington [by] City of Bothell, pp. 18-19.

terms of damage to public and private property. *See Citizens Protecting Resources v. Yakima County*, 152 Wn. App. 914, 219 P.3d 730 (2009). Municipalities narrowed the conditions under which they would accept stormwater facilities for operation and maintenance in response to these storms.

Finally, the Court is asked to take judicial notice, pursuant to ER 201, of the attached 2014 Real Estate Property Tax bill for one of the properties in Crystal Ridge. The Surface Water Management fee is \$149 a year. If one rounds that up to \$150, the 80 plus houses in Crystal Ridge pay \$12,000 on a yearly basis to the City. If one assumes a twenty-seven year interval, \$324,000 would be collected from this community in fees. Municipalities are not without resources to address drainage easements that they have a duty to maintain.

III. LEGAL ARGUMENT

A. A Statutory Dedication Of The Easements Has Been Accomplished

“Dedication may be accomplished under statute or at common law.” *Donald v. City of Vancouver*, 43 Wn. App. 880, 885, 719 P.2d 966 (1986) (citing chapter 58.17 RCW; 11 E. McQuillin, Municipal Corporations sec. 33.03, at 640 (3d ed. rev.1983)). Both require “(1) an intention of the owner to dedicate and (2) acceptance by the public.” *Donald*, at 885 (quoting 11 McQuillin, sec. 33.02, at 636); *Sweeten v. Kauzlarich*, 38 Wn. App. 163, 165–66, 684 P.2d 789 (1984). Where, as here, a statutory dedication has been made, the intent of both the grantor

and grantee are controlled by the plat. *Kiely v. Graves*, 173 Wn.2d 926, 933, 271 P.3d 226 (2012). The legal conclusions turn upon the interpretation of the plat documents. The question of whether the developer of Crystal Ridge effectively dedicated the drainage easement to Snohomish County is correctly decided by the court as a matter of law. *Donald*, 43 Wn. App. at 887.

The *Donald* court considered the validity of an express dedication of park property to the city. *Donald*, at 880. The court found that the “construction of deeds is generally a matter of law for the court, *Thomas v. Nelson*, 35 Wn. App. 868, 871, 670 P.2d 682 (1983), and we interpret the deed in light of well-established principles of the law of real property.” *Donald* at 884. Finding no material issue of fact raised by the “four corners” of the deed, the court affirmed judgment for the city. *Donald* at 887.

In *Kiely v. Graves*, the court considered ownership of an alley dedicated by plat to the city. The court found that the dedication by plat was “a statutory dedication, evidenced by the presentment for filing of a plat and its subsequent approval by the city.” *Kiely*, 173 Wn.2d at 932 (citing RCW 58.17.020(3); *Richardson v. Cox*, 108 Wn. App. 881, 891, 26 P.3d 970, 34 P.3d 828 (2001)). In Washington a dedication to a city or town is governed by RCW 58.08.015 which states it is tantamount to a “quitclaim deed.”

In this case, Respondents submitted to the trial court the plats for Divisions 1 and 2 of the Crystal Ridge development. (CP 653-663.)

Numerous “drainage easements” are depicted on the plats that were clearly dedicated to the County by the developer. *Id.* That Snohomish County accepted the dedication of all drainage easements is equally without question. As the court stated in *City of Spokane v. Catholic Bishop of Spokane*, 33 Wn.2d 496, 503, 206 P.2d 277 (1949): “Acceptance may arise (1) by express act; (2) by implication from the acts of municipal officers; and (3) by implication from user by the public for the purposes for which the property was dedicated. 4 McQuillin, Municipal Corporations, 2d Rev., 773, § 1704.” Referring again to the plats for Crystal Ridge, Division 1 bears the signatures of the Snohomish County Director of Public Works, Snohomish County Director of Department of Planning and Community Development, Snohomish County Council and Snohomish County Auditor. (CP 660.) Division 2 bears these signatures as well, in addition to that of the Snohomish County Treasurer. (CP 654.) Reasonable minds could not come to any conclusion but that Snohomish County accepted the developer’s dedication of all the drainage easements within Divisions 1 and 2 of Crystal Ridge.

Although Respondent’s position is that the express dedication to Snohomish County is unambiguous, should ambiguity be found, “extrinsic evidence is allowed to show the intentions of the original parties, the circumstances of the property when the easement was conveyed, and the practical interpretation given the parties’ prior conduct or admissions.” *Sunnyside Valley Irrigation District v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2012) (citing *City of Seattle v. Nazarenius*, 60 Wn.2d 657, 665,

374 P.2d 1014 (1962)). Consideration of such evidence in this case only reinforces the facts that the developer dedicated--and Snohomish County accepted--all drainage easements within Crystal Ridge.

The testimony of the contemporaneous engineers involved in the permitting of the development and the filing of the plats establish that Snohomish County required all storm (both infiltrated, interceptor and surface water) pipes be placed on the as-built plans. Mr. Trepanier, who prepared the as-builts for Crystal Ridge, created a reproducible Mylar of the final and approved system and submitted that to the County. The reason that was done was so that it could be filed of record and kept because the County would have to know where the roads and storm systems were for maintenance and repair. (CP 291, CP 811.) At the time of the development of Crystal Ridge, it was Snohomish County's practice to obtain control of all the retention/detention systems and their accompanying drainage structures such as the lateral drains and the sub-drain/interceptor drain." (CP 811.)

Mr. Trepanier specifically recalled the dedication of the drainage easement containing the interceptor pipe. He noted that the only "drainage feature" in Tract 999 is the interceptor pipe. Absent the pipe, there would be no "drainage easement" called out at that location on the plat.⁹ (CP 291-292.) He specifically "calculated the size of the rectangular retention/detention pond in order to accommodate the groundwater flows

⁹ The interceptor pipe is irrefutably in Tract 999 since Dr. Denby saw it installed there. CP 296.

that would be intercepted by the sub-drain/interceptor drain.” (CP 811.) As engineer Trepanier states, “the easements were required by the County so that it had the unquestionable ability to perform maintenance and repairs on these types of facilities.” (CP 292.) This became all the more logical when AWD placed its sanitary sewer line in the same twenty-five foot easement that the sub-drain/interceptor trench was in. With the sanitary sewer pipe in the easement with the sub-drain, “private property owners would never be allowed to make decisions regarding its maintenance and repair.” (CP 292.)

B. Common Law Dedication Has No Application on the Undisputed Facts of This Case

Both statutory and common law dedications require the same elements of “(1) An intention on the part of the owner to devote his land, or an easement in it, to a public use, followed by some act or acts clearly and unmistakably evidencing such intention, and (2) an acceptance of the offer by the public.” *Sweeten v. Kauzlarich*, at 165, quoting *Seattle v. Hill*, 23 Wn. 92, 97, 62 P. 446 (1900). The issue of common law dedication typically arises where an express dedication did not occur or the statutory dedication failed to meet necessary formalities. *Sweeten*, at 167; see also *City of Spokane* at 500. “The distinction between a statutory dedication and a common-law dedication is that the former proceeds from a grant whilst the latter operates by way of an *estoppel in pais*.” *Roundtree v. Hutchinson*, 57 Wash. 414, 415-416, 107 P. 345 (1910). Where, as the facts establish here, the dedication was made pursuant to the provisions of

a statute, Ch. 58.17 RCW, intent and acceptance are controlled by the plat documents. See *Kiely v. Graves* at 931-33. Common law dedication has no application to this case. *Sweeten v. Kauzlarich*, 38 Wn. App. 163 (considered a common-law dedication where intent and acceptance could not be found in recorded documents); *Knudsen v. Patton*, 26 Wn. App. 134, 611 P.2d 1354 (1980); (developer allegedly dedicated a park area to the public, but later developed and sold that property).

In none of the cases discussing common-law dedication did the court have before it a statutory dedication satisfying both the intent and acceptance elements.¹⁰ As a result, the courts conducted extensive inquiries into the facts of the property owner's intention and the extent of the public entity's acceptance. Such inquiries are unnecessary when a statutory dedication has occurred as was established by this court in *Kiely v. Graves*, at 932: "Here, the Powers made a statutory dedication, evidenced by the presentment for filing of a plat and its subsequent approval by the city. See RCW 58.17.020(3); *Richardson v. Cox*, at 891. Thus, we turn to the statutes."

The alley at issue in *Kiely v. Graves* was described as to size and location in a plat dedicated by the owner to the city for use as a public thoroughfare. The city accepted the dedication, finding that the intent of the grantor and grantee are controlled by the plat, on which the areas to be dedicated are designated. *Kiely v. Graves*, 173 Wn.2d at 933 ("Intent must

¹⁰ *Knudsen v. Patton*, at 142 n. 11: "Plaintiff's sole theory, at trial and on appeal, is based on a common law dedication."

be adduced from the plat itself.”) 11A McQuillin Mun. Corp. § 33:4 (3d ed (“Statutory dedications are those made pursuant to the provisions of a statute. . . . Statutory dedication is commonly accomplished through the filing of a map or plat designating the areas to be dedicated and are controlled wholly by the terms of the authorizing statute.”). Acceptance is not established by evidence extrinsic to the plat, but by the municipality’s signatures approving the plat for filing. RCW 58.17.020 (Defining “Dedication” and showing that “*acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit.*”) (*emphasis added*)). Based on the plat documents, the court held that the alley was not subject to adverse possession because the city held an easement interest in the alley until it vacated it by ordinance. *Id.*, at 940. In this case, the evidence establishes that the developer of the Crystal Ridge plats intended to dedicate all of the drainage easements depicted in the plat documents to Snohomish County.¹¹

C. The Position taken by the City and WSAMA that Maintenance of the Interceptor Pipe Would be an Unconstitutional Gift of Public Funds Finds No Factual or Legal Support in this Case

At summary judgment, Respondents introduced the declarations of the two engineers who were involved with the drainage system for Crystal Ridge. CP 292-304; CP 290-292, 808-814. The engineers’ testimony

¹¹ There has been no evidence developed that the developers intended to restrict the dedication to only certain drainage easements or that they believed that they retained control or could later convey some of the drainage easements. Again, the County approved the plats and dedication at issue as evidenced by the signatures on the face of each plat. (CP 45, 50).

established that the interceptor pipe facilitated drainage for both the residential development and the surrounding area. Dr. Denby testified provided diagrams showing the uphill groundwater capture zone of over a half mile. CP 303, 304. Engineer Trepanier testified that he sized the rectangular pond to accept these regional flows. CP 296.

That Respondent's declarations from Dr. Denby and Mr. Trepanier established that the interceptor pipe installed at Crystal Ridge served the public interest is confirmed by the case of *Citizens Protecting Res. v. Yakima Cnty.*, 152 Wn. App. 914, 219 P.3d 730 (2009) (hereinafter "Citizens") At significant expense, Yakima County paid to relocate a private wrecking yard from a flood-prone island to a residential neighborhood. Plaintiffs argued that such expenditure violated sections 5 and 7 of the State Constitution. The court found that "The manifest purpose of these provisions in the constitution is to prevent state funds from being used to benefit private interests where the public interest is not primarily served. *Japan Line, Ltd. v. McCaffree*, 88 Wn.2d 93, 98, 558 P.2d 211 (1977)." *Citizens* at 920. The court went on to set out the test of whether these constitutional provisions have been violated asking whether fundamental purpose of governance was served.¹² It did not reach the

¹² The language used was: A two-pronged analysis is employed to determine whether a gift of state funds has occurred. First, the court asks if the funds are being expended to carry out a fundamental purpose of the government? If the answer to that question is yes, then no gift of public funds has been made. The second prong comes into play only when the expenditures are held to not serve fundamental purposes of government. The court then focuses on the consideration received by the public for the expenditure of public funds and the donative intent of the appropriating body in order to determine whether or

second prong, finding that “the government purpose here was to fight flooding on the Yakima and Naches Rivers. . . .” which was a fundamental purpose of government. *Citizens* at 921.

The City and WSAMA wrongly assert that the interceptor pipe at Crystal Ridge “was intended solely to mitigate the adverse environmental effects of the private development of Crystal Ridge” and provided no public benefit.¹³ They rely on a statement from Donald Feine, an engineer with the City since July 2010 (CP 342), that “the interceptor trench does not protect any City property or infrastructure.” (CP 344.) Mr. Feine does not cite to any supporting materials for his conclusory statement.¹⁴ Thus, City and WSAMA’s position is without factual support.

The City and WSAMA’s position also fails as a matter of law. In essence, the City and WSAMA contend that the mitigation of environmental and drainage impacts from residential development serves no public interest. The court in *Smith v. Spokane County*, 89 Wn. App. 340, 948 P.2d 1301 (1997) considered a challenge to fees imposed on water and sewer customers in an aquifer protection area. The court rejected the argument that such fees were an unconstitutional gift to a private interest, holding that the revenue collected was “used to construct a

not a gift has occurred. *Id.*, citing, *CLEAN v. State*, 130 Wn.2d 782, 797, 928 P.2d 1054 (1996).

¹³ See Amicus Curiae Brief of Washington State Association of Municipal Attorneys in Support of City of Bothell’s Petition for Review, p. 4.

¹⁴ *Price v. City of Seattle*, 106 Wn. App. 647, 657, 24 P.3d 1098 (2001): “An opinion of an expert which is simply a conclusion or is based on an assumption is not evidence which will take a case to the jury.”

sewer to preserve and protect the drinking water and hence the public health and safety.” *Id.*, at 361.

In *Hudson v. City of Wenatchee*, 94 Wn. App. 990, 974 P.2d 342 (1999), a private locksmith challenged the city policy of allowing its police officers to assist citizens who were locked out of their vehicles free of charge. The court found that “actions which fall into the community caretaking function are indeed a fundamental purpose of government.” *Hudson*, at 996. In carrying out this purpose of government, there was no gift of public funds. *Smith and Hudson*. To accept their position, the court must find in derogation of the interceptor pipe installed at Crystal Ridge, which stabilizes the sanitary sewer and prevents water from flowing across roads, did not serve the public health and safety. The City and WSAMA’s unconstitutional talking arguments fail.

IV. CONCLUSION

This Court is respectfully asked to uphold the trial court and Division I’s finding that a statutory dedication loss accomplished in 1987 that included the drainage pipe.

RESPECTFULLY SUBMITTED AND DATED this 4th day of
April, 2014.

TERRELL MARSHALL DAUDT
& WILLIE PLLC

A handwritten signature in black ink that reads "Karen A. Willie". The signature is written in a cursive style with a large, prominent initial "K".

By: _____

Karen A. Willie, WSBA #15902
Email: kwilliw@tmdwlaw.com
Bradley E. Neunzig, WSBA #22365
Email: bneunzig@tmdwlaw.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 350-3528

Attorneys for Respondents

CERTIFICATE OF SERVICE

I, Karen A. Willie, hereby certify that on the 4th day of April, 2014. I caused to be served, via hand delivery by messenger, and by electronic mail, a true and accurate copy of the foregoing upon the following parties:

Joseph N. Beck
Email: joe.beck@ci.bothell.wa.us
CITY OF BOTHELL
18305 101st Avenue NE
Bothell, Washington 98011-3499

Stephanie Croll
Email: scroll@kbmlawyers.com
KEATING BUCKLIN & McCORMACK, INC., P.S.
800 Fifth Avenue, Suite 4141
Seattle, Washington 98104

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

DATED this 4th day of April, 2014.



Karen A. Willie, WSBA No. 15902

— EXHIBIT A —

2014 REAL ESTATE TAX

KIRKE SIEVERS

SNOHOMISH COUNTY TREASURER M/S #501
3000 ROCKEFELLER AVE., EVERETT WA 98201-4060

PARCEL NUMBER

FIRST 4 LINES OF LEGAL DESCRIPTION:
CRYSTAL RIDGE DIVISION

PROPERTY ADDRESS:
BOTHELL, WA

CURRENT YEAR TAXES & FEES		CURRENT YEAR BILLING INFORMATION	
NORTHSHORE PARK AND RECREATION	5.37	Voter Approved %	49.75 %
KING COUNTY RURAL LIBRARY	199.53	Amount	1,918.05
SNOHOMISH COUNTY-CNT	383.16	Land	148,000
CITY OF BOTHELL	669.46	Improvements	207,200
STATE	846.92	Total Value	355,200
NORTHSHORE SCHOOL DIST NO 417	1,751.00	Levy Code	00902
Special Assessments:		Levy Rate	10.8543
SURFACE WATER MANAGEMENT PRINCIPAL	149.00	Gross Tax	3,855.44
SNO COUNTY CONSERVATION DISTRICT	5.01	- Exemption	0.00
		+Spec Assesmnt	154.01
Total Tax:	4,009.45	Total Tax:	4,009.45

SUMMARY OF TOTAL AMOUNT DUE AS OF 04/2014			
YEAR	TAX	PENALTY/INTEREST/FEE	TOTAL
H2014	2,004.72		2,004.72
AMOUNT DUE			2,004.72

BOTHELL, WA 98021

KEEP THIS PORTION

PARCEL NUMBER

KIRKE SIEVERS
TREASURER
(425) 388-3366

Make checks payable to: SNOHOMISH COUNTY TREASURER
Mail to: PO BOX 34171
SEATTLE, WA 98124-1171

SUMMARY OF TOTAL AMOUNT DUE AS OF 10/2014			
YEAR	TAX	PENALTY/INTEREST/FEE	TOTAL
H2014	2,004.73		2,004.73
AMOUNT DUE			2,004.73

PLEASE MAKE NAME AND ADDRESS CHANGES ON BACK

CURRENT YEAR SECOND HALF*	2,004.73
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*Assumes 1st half was paid timely.

PROPERTY ADDRESS:
BOTHELL WA

2

DETACH AND REMIT THIS COUPON WITH 2ND PAYMENT IN ENVELOPE PROVIDED - DUE OCTOBER 31ST

DO NOT WRITE BELOW THIS LINE

BOTHELL, WA 98021



00760200000700 00000200473 22014 1

PARCEL NUMBER

KIRKE SIEVERS
TREASURER
(425) 388-3366

Make checks payable to: SNOHOMISH COUNTY TREASURER
Mail to: PO BOX 34171
SEATTLE, WA 98124-1171

SUMMARY OF TOTAL AMOUNT DUE AS OF 04/2014			
YEAR	TAX	PENALTY/INTEREST/FEE	TOTAL
H2014	2,004.72		2,004.72
AMOUNT DUE			2,004.72

PLEASE MAKE NAME AND ADDRESS CHANGES ON BACK

CURRENT YEAR FULL TAX	4,009.45	CURRENT YEAR FIRST HALF	2,004.72
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PROPERTY ADDRESS:
BOTHELL WA

1

DETACH AND REMIT THIS COUPON WITH 1ST PAYMENT IN ENVELOPE PROVIDED - DUE APRIL 30TH

DO NOT WRITE BELOW THIS LINE

BOTHELL, WA 98021



00760200000700 00000200472 12014 1

OFFICE RECEPTIONIST, CLERK

To: Bradford Kinsey
Subject: RE: 89533-3-Crystal Ridge Homeowners Assn. et al. v. City of Bothell: Respondents' Supplemental Brief

Received 4-4-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Bradford Kinsey [mailto:bkkinsey@tmdwlaw.com]
Sent: Friday, April 04, 2014 1:46 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Karen Willie; Bradley Neunzig
Subject: 89533-3-Crystal Ridge Homeowners Assn. et al. v. City of Bothell: Respondents' Supplemental Brief

Good afternoon,

Attached for filing with the court is Respondents' Supplemental Brief in the above-referenced matter.

Thank you for your attention.

Bradford Kinsey
Legal Secretary
TERRELL MARSHALL DAUDT & WILLIE PLLC
936 N. 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 350-3528