

No. 96613-3

NO. 49854-5-II

DIVISION II OF THE COURT OF APPEALS FOR
THE STATE OF WASHINGTON

CHURCH OF THE DIVINE EARTH

APPELLANT

V.

CITY OF TACOMA,

RESPONDENT.

ERRATA TO APPELLANT'S OPENING BRIEF

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The Church of the Divine Earth (“Church”) submits this Errata to Appellant’s Opening Brief. The Church herewith revises assignment of error 21, p. 23 by correcting “CP” references to “RP”. Said revised page is attached. The Church also updated the table of contents error number 21 p. ii to reflect the updated assignment of error 21. The revised table of contents page is attached as well.

RESPECTFULLY SUBMITTED this 20th day of June, 2017.

GOODSTEIN LAW GROUP PLLC

By: s/Richard B. Sanders

Richard B. Sanders, WSBA #2813

Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served the foregoing document on the following persons and in the manner listed below:

Margaret Elofson, Deputy City Attorney City of Tacoma, Office of the City Attorney 747 Market Street, Room 1120 Tacoma, WA 98402 Email: margaret.elfson@ci.tacoma.wa.us	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email <input type="checkbox"/> Facsimile
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DATED this 20th day of June 2017, at Tacoma, Washington.

s/Deena Pinckney
Deena Pinckney

and the Hearing Examiner based his ruling on the City's representation of 30 feet?

D. Would preclusion of the Church's right to present facts of a 30 foot exaction contrary to the City's claim of an 8 foot dedication be unjust because the 8 foot claim was first advanced by the City Attorney at oral argument in a LUPA hearing without prior notice and contrary to the administrative record?

21. The court abused its discretion when it erroneously sustained multiple objections to cross examination questions to Deputy Capell and Director Huffman regarding representations to the Hearing examiner and LUPA judge at oral hearing regarding 30 feet v. 8 feet right-of-way exaction conditions. Capell: RP 672—676; Huffman: RP 1045--1047

Issues:

A. Was it proper to sustain these objections in cross examination of the Deputy City Attorney based on the Court's prior Order in Limine (assigned err #20) and or the LUPA judgment of February 19, 2015 which referenced an 8 foot dedication? RP 674

B. Considering the offer of proof by the church's attorney should the objections have been sustained? RP 675—676

C. How can the Church present its 64.40 case regarding the nature of the "final decision" at issue if it isn't allowed to prove the extent of the exaction called for in the Letter Decision of April 28, 2014 or the decision of the Hearing Examiner?

IV. STANDARD OF REVIEW

This was a bench trial which ultimately resulted in entry of Findings of Fact and Conclusions of Law. True Factual Findings are reviewed to determine if they are supported by substantial evidence.

Govett v. First Pac. Inv. Co., 68 Wn.2d 973, 973, 413 P.2d 972 (1966).

Substantial evidence is such evidence that would persuade a fair

minded person the facts were actually proven. *Holland v. Boeing Co.*,

90 Wn.2d 384, 390-91, 583 P.2d 621 (1978). Conclusions of Law are

18.	The trial court erred when it denied the Church’s timely motion to amend its complaint and its motion to reconsider to assert a cause of action under 42 USC 1983 for violating the Church’s federal constitution rights and add language regarding sidewalks to its RCW 64.40 claim. CP 573, 639	21
19.	The trial court erred when, after in camera review; it refused to strike one or more claims of exemption, wholly or partially, based on the attorney client privilege and/or work product. CP 640, 843	22
20.	The court erred when it granted the City’s pretrial motion in limine to exclude evidence offered for the purpose of disputing that the right of way condition at issue was 8 feet. CP 1927, RP 318, 345	22
21.	The court abused its discretion when it erroneously sustained multiple objections to cross examination questions to Deputy Capell and Director Huffman regarding representations to the Hearing examiner and LUPA judge at oral hearing regarding 30 feet v. 8 feet right-of-way exaction conditions. Capell: RP 672—676; Huffman: RP 1045--1047.....	23
B.	The trial court abused its discretion when it denied the Church’s Motions to Amend	38
	1. Denial of Church’s Motion to Amend to add a 1983 claim was an abuse of discretion	38
	2. The Motion to Amend to add reference to sidewalks was erroneously denied because the trial court made an error of law by concluding (Conclusion of Law 1) that the “final decision” of the City was the Hearing Examiner Decision of August 19 rather than the Director’s Letter Decision of April 28.....	41
	
C.	The trial court erred when it granted the City’s pre-trial motion in limine to exclude evidence offered for the purpose of disputing that the right-of-way condition at issue was 8 feet.	44

GOODSTEIN LAW GROUP PLLC

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