

NO. 68416-7-I

**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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EDWARD M. GOODMAN, et ux., Respondents,

v.

MICHAEL J. GOODMAN, et ux., et al., Appellants.

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MOTION IN BRIEF AND BRIEF OF APPELLANT

---

Michael Goodman  
pro se, Appellant  
13785 Goodman Lane  
Anacortes, WA 98221  
(360) 293-3298

SHARON D. ...  
KW

ORIGINAL

No. 68416-7-I

COURT OF APPEALS  
DIVISION ONE  
OF THE STATE OF WASHINGTON

EDWARD M. GOODMAN, et ux., )  
Respondents, ) APPELLANTS MOTION  
V ) IN BRIEF  
MICHAEL J. GOODMAN, et ux., )  
et al., )  
Appellants. )  
\_\_\_\_\_ )

1. IDENTITY OF MOVING PARTY

Appellant Michael Goodman asks for the relief designated in

Part 2.

2. STATEMENT OF RELIEF SOUGHT

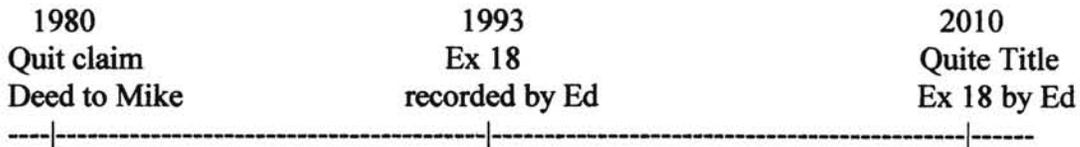
Deny Respondents equitable relief for fraud.

3. FACTS RELEVANT TO MOTION

1) In 1980 Respondents Edward Goodman and Bernice Goodman conveyed property (Lot 2) to Appellants Michael Goodman and Mary Goodman by quit claim deed. Ex 17.

2) **Fraud.** In 1993, thirteen years after conveyance, Edward Goodman recorded with the Skagit County Auditor a hand drawn road easement to his beach, right thru Michael Goodman's Lot 2, clouding Mike's property title. Ex 18. Attached.

3) In 2010 Edward Goodman filed suit to quiet title Ex. 18, adding a declaratory judgment claim.



Ed's testimony on creating, recording, and conduct regarding the two page document Ex 18. RP 84-85.

**Q. Look at Page 2. Was that attached to the documents signed by your brother when he signed it?**

**A. No, it was not.**

**Q. Tell the Court why that happened and how?**

**A. In 1993 when I went into the courthouse, the Auditors, to have this recorded, the clerk was reading through it and said, existing roadway? Where is the existing roadway? She got a copy of the short plat. At that time I had a pencil, and I drew in for illustrative purposes where the road was, the existing roadway, not to scale, just drew it in. At that point she took it along with this and filed it with the - -**

**Q. Recorded it?**

**A. Yes.**

RP 145

**Q. Okay. Your law enforcement experience, you're familiar with the term 'Ignorance of the law is no defense or excuse?'**

**A. Yes, I am.**

**Q. Can you explain why Mary Goodman did not sign this?**

**A. No, I cannot.**

**Q. You're familiar with the term from your other deeds for love and affection, correct?**

**A. Yes.**

**Q. As being consideration?**

**A. Yes.**

**Q. I don't see that in Exhibit 18.**

**Mr. Moser: Is there a question, counsel:?**

**Q. Did you put any kind of consideration at all in there?**

**A. No, I did not.**

RP 151-152

**Q. Did you share that recording with anybody?**

**A. Not to my knowledge, no I did not.**

**Q. Just slipped it in?**

**A. I didn't slip it in. I went over and recorded it because I felt -- because on Lot 1 was what I was concerned about and the confrontation Mike was having with all of the property owners.**

**Q. So what I understand from your testimony, the reason you recorded Exhibit 18 was because of the concern over Lot's 1 dispute?**

**A. No. I didn't have any concern that I had an easement, but I just wanted that recorded.**

**Q. Okay. And when I reference slipping in, you didn't give this to the people of Lot 1 after you recorded it?**

**A. No, I did not.**

**Q. You didn't give it to Mike?**

**A. No, I did not.**

**Q. You just testified that Mike didn't know you did this?**

**A. Correct, did not know.**

**Q. Okay. So you don't dispute that it's hand drawn?**

**A. No, I do not, and I did it.**

**Q. Can you explain why you didn't tell Mike that you recorded it?**

**A. No, I can't.**

Mike's testimony. RP 222.

**Q. Is that your signature? A. No.**

**THE COURT: That's exhibit?**

**MR. BUTLER: 18.**

#### 4. GROUNDS FOR RELIEF AND ARGUMENT

RAP 17.4(d) authorizes a motion in brief to preclude hearing an appeal on the merits. The testimony Ed gave creating and recording Ex 18 violates:

1. RCW 26.16.030 Community Property; Mike and Mary

Goodman did not sign Ex 18.

2. RCW 9.38.020 False Representation Concerning title.

**Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.**

Ed has clouded Mike's property title in 1993 fraudulently.

3. RCW 58.17.165 Certificate giving description and statement of owners must accompany final plat - Dedication, certificate requirements if plat contains - Waiver; Ed records Ex. 18 that

clouds short plat 55-80 Ex 1 and short plat 61-89 Ex 27 (in 1990 Lot 1 of short plat 55-80 was subdivided into short plat 61-89 Ex 27, Ed misrepresents this fact) without consideration.

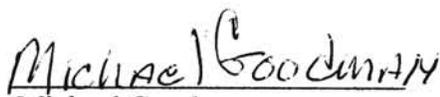
4. RCW 90.58 Shoreline Management Act; as the use and road are within the 200' shoreline setback on Mike's property.

5. The Clean Hands Doctrine: Ed's conduct was not fair or honest. He testified he didn't tell Mike before or after creating Ex 18, which clouded Mike's title and damaged his property.

The violation of the statutes in 1993 exclude Respondents Ed Goodman and Bernice Goodman equitable relief *seventeen years* later in 2010 and *thirty years* after conveyance. In other words, a party cannot profit from fraud. The Court should deny any equitable relief to Respondents Ed Goodman and Bernice Goodman.

DATED this 29<sup>th</sup> day of October, 2012.

Respectfully submitted,

  
Michael Goodman  
Pro se, Appellant  
13785 Goodman Lane  
Anacortes, WA 98221  
(360)299-2239

FILED FOR RECORD AT REQUEST OF

4/1/81

BERRY MCINTURE  
SKAGIT COUNTY AUDITOR

9302260072

93 FEB 26 P1:58

NAME Edward M. and Bernice Goodman  
1389 Goodman Lane  
ADDRESS ~~319 Evergreen St~~  
Anacortes, WA 98221  
CITY AND STATE Mount Vernon, Wash 98273

RECORDED \_\_\_\_\_ FILED \_\_\_\_\_  
REQUEST OF \_\_\_\_\_

Ex 18

Easement grants for the following described real estate, situated in the County of Skagit State of Washington

Tract 2 of Short Plat No. 55-80, approved July 11, 1980 and recorded July 28, 1980., in Volume 4 of Short Plats, page 152, being a portion of Government lot 3 and the Northeast quarter of the Southwest Section 12, Township 34 North, Range 1 E, W.M.

NOTE

1. Continuation of the 60' road easement from Tract 1 through tract 2 to tract 3 for access from the county road to tract 3 Road will follow the existing roadway
2. Easement for beach access on existing roadway through tract 2 until roadway crosses West property line of Tract 3.
3. Easement to beach access shall be exclusively for the family of Edward M. and Bernice Goodman and shall not be transferrable.
4. All maintenance and construction of private roads are the responsibility of the tract owners and the responsibility of maintenance shall be in direct relationship to useage of road.

Dated Sept 8, 1980

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax  
PAID

FEB 26 1993

Michael J. Goodman  
Owner Tract 2 of Short Plat 55-80  
Edward M. Goodman  
Owner Tract 3 of Short Plat 55-80

Amount Paid \$ - 0 -  
By: [Signature]  
Skagit County Treasurer Deputy

STATE OF WASHINGTON  
COUNTY OF SKAGIT

On this day personally appeared before me Michael J. Goodman and Edward M. Goodman to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that THEY signed the same as THEIR free and voluntary act and deed, for the uses and purposed therein mentioned

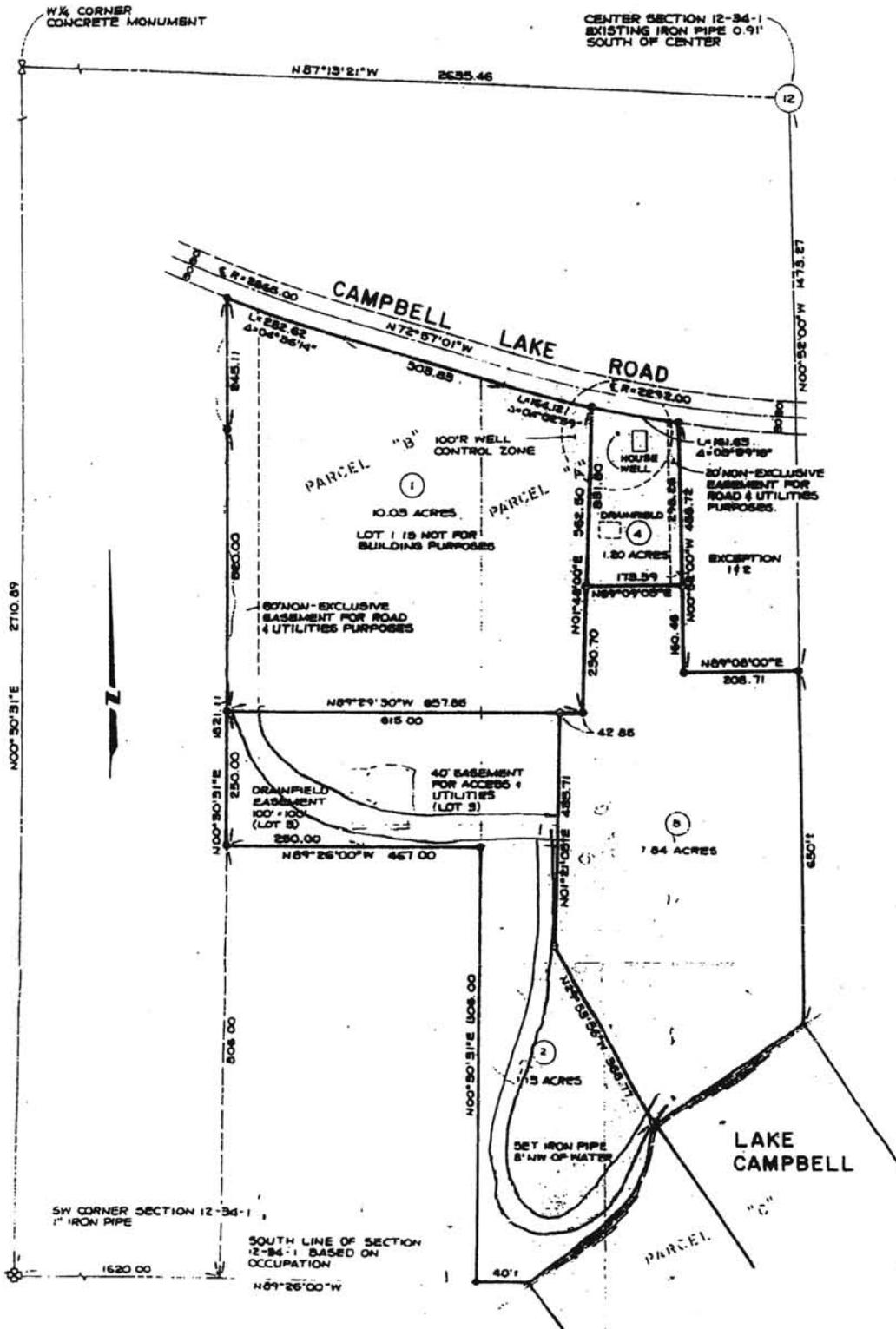
GIVEN under my hand and offical seal this 8th DAY OF September, 1980

Jacqueline M. Miller  
Notary Public in and for the State of Washington  
residing at Mount Vernon

9302260072

BK 1167 PG 0030

**SURVEY IN SECTION 12, TWP. 34N, R 1 E, W.M.  
REVISED SKAGIT COUNTY SHORT PLAT NO. 55-80**



**LEGAL DESCRIPTION**

**PARCEL A:**  
THAT PORTION OF GOVERNMENT QUARTER OF THE SOUTH-TOWNSHIP 34 NORTH, RANGE 1 EAST, WEST MERIDIAN, LYING SOUTH-ALONG CAMPBELL LAKE ROAD, UNDER LINE OF LAKE CAMPBELL, EARLY BOUNDARIES OF THE TRACT VEYED TO ARTHUR M. WILSON, CHRISTENSEN AND ART UNDER AUDITOR'S FILE NO. 127, RESPECTIVELY;

EXCEPT THE FOLLOWING:  
1. BEGINNING AT A POINT WEST QUARTER OF SAID SOUTH OF THE CENTER AT RIGHT ANGLES 208 FEET, THENCE NORTH AT POINT OF BEGINNING,  
2. BEGINNING AT A POINT QUARTER OF SAID SECTION OF THE CENTER OF SAID ANGLES 208.71 FEET, THENCE NORTH AT RIGHT ANGLES

**PARCEL B:**  
THAT PORTION OF GOVERNMENT QUARTER OF THE SOUTH-TOWNSHIP 34 NORTH, RANGE 1 EAST, WEST MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 16.46 FEET OF THE SOUTHWEST CORNER 467 FEET; THENCE NORTH ALONG ROAD KNOWN AS CAMPBELL LAKE ROAD, 111 FEET NORTH OF THE POINT OF BEGINNING

**PARCEL C:**  
ALL SECOND CLASS SHORELAND TO OR ABUTTING UPON THE SOUTH-TOWNSHIP 34 NORTH, RANGE 1 EAST, WEST MERIDIAN, L. 111 TO AND 2087 FEET EAST OF THE CENTER OF SAID SECTION, ALL AS CONVEYED BY THE RECORDS IN VOLUME 127 SKAGIT COUNTY, WASHINGTON

THE ABOVE DESCRIBED PARCELS ARE SUBJECT TO THE FOLLOWING RESTRICTIONS:

1. A.F. #157974
2. A.F. #315283
3. A.F. #7908140012
4. RIGHT IN THE GENERAL OF ALL THE WATERS OF LAKE CAMPBELL FOR NAVIGATION, BUT ALL OTHER RIGHTS RESERVED.

9. • DENOTES EXISTING IRON PIPE
10. WATER OF SUFFICIENT QUANTITY AND/OR PURPOSES IS NOT PROVIDED AT THE TIME OF SURVEY; THE BUYER SHOULD INQUIRE AND INVESTIGATE AS TO THE AVAILABILITY OF WATER FOR NAVIGATION.

**VOTES**

**9302260072**

ALL MAINTENANCE AND CONSTRUCTION OF PRIVATE ROADS ARE THE RESPONSIBILITY OF THE LOT OWNERS AND THE RESPONSIBILITY OF MAINTENANCE SHALL BE IN DIRECT RELATIONSHIP TO USAGE OF ROAD. SHORT PLAT NUMBER AND DATE OF APPROVAL SHALL BE INCLUDED IN ALL DEEDS AND CONTRACTS.  
ZONING - RESIDENTIAL  
SEWAGE DISPOSAL - INDIVIDUAL SEPTIC SYSTEMS

201107000021

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**BRIEF OF APPELLANT**

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## I. INTRODUCTION

Appellants Michael Goodman and Mary Goodman's 7.13 acre property exists on the shoreline of Lake Campbell, in Anacortes, Washington. The property covers the Westside of a rounded 80' knoll (Lot 2) Ex 22. Respondents Ed Goodman and Bernice Goodman's 7.84 acre property shares the Eastside of the knoll (Lot 3). Skagit County Planning designates the area as rural reserve.

The trial court ordered a survey of the subject road on Michael Goodman's Lot 2 and Goodman Lane. Respondents failed to survey Goodman Lane. The average road width was 8'. The Respondents increased the legal description to 20' width. Herein after, Mike v. Ed.

This road easement runs thru the center of Mike's property to the top of the knoll across the shared property line to point "A" and then back down thru Lot 2 down to the lakefront and across Mike's entire beach and across the property line again to Ed's beach on Lot 3. Ed has three road easements; North, knoll, and beach. And a septic easement on Mike's Lot 2 that is 100' x 100'.

Mike's property is shackled with easements. It is impossible to build, sell, and the value is destroyed. Mike lives in a trailer that is falling apart and if the trial decision is enforced will be homeless. Ed will try to hide the survey from The Court on the next page done by Sound Development Group. CP 108. Ed wants to deny the damage done to Mike hoping The Court will be confused with the legal description numbers.



## II. ASSIGNMENT OF ERRORS

1. The trial court erred in law concluding unity of title and subsequent separation over Goodman Lane, Lot 1 and Lot 3 of short plat 61-89 Ex 27. Conclusion of Law #6 and #1.
2. The trial court erred in law concluding the usage was apparent and omitting the continuous usage. Conclusion of Law #4.
3. The trial court erred in law concluding the usage was reasonably necessary. Conclusion of Law #5.
  - A. A higher degree of necessity is required for an implied reservation and the cardinal consideration is intent of the parties.
  - B. The trial court failed to compare the injury of the parties.
  - C. The trial court failed to apply the test of necessity.
  - D. Violates the Shoreline Management Act.
4. The 1979 road build date is false, the trial court abused its discretion in findings of fact #36. It errors in law and fact.

## ISSUES PERTAINING TO ASSIGNMENT OF ERROR.

1. Whether the trial court erred in law concluding unity of title and subsequent separation over Goodman Lane when Ed did not own Lot 1 or Lot 3 of short plat 61-89 Ex 27 or convey them to the current owners?

2. Whether the trial court erred in law concluding apparent usage and omitting continuous usage before the 1980 conveyance Ex. 17, Ed did not build and reside on his Lot 3 until 1991, eleven years after the 1980 conveyance to Mike?

3. Whether the trial court erred in law concluding the usage was reasonably necessary?

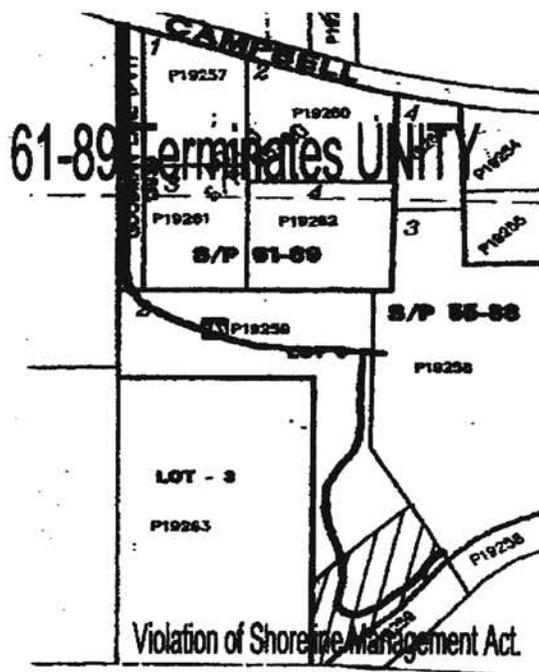
- A. Implied Reservation?
- B. Injury to Mike's property?
- C. Ed's own ingress egress and septic?
- D. Violation of the Shoreline Management Act?

4. Whether the trial court erred by abusing its discretion finding the 1979 road build date when evidence admitted by Ed was incompetent, while Mike admitted aerial photos that no road existed, and errors in law as no apparent usage before 1980?

### III. STATEMENT OF THE CASE

#### Issue No. 1. No Unity over Goodman Lane.

The subject road begins at Campbell Lake Road (public) down Goodman Lane which exists on Lot 1 and Lot 3 of short plat 61-89 Ex 27, thru Mike's Lot 2 on short plat 55-80 Ex 1 and to Ed's beach on Lot 3. Diagram of road easement below.



Ed did not own or convey Lot 1 or Lot 3 of Short Plat 61-89 Ex. 27. Dina Wright owned and conveyed Lot 1 to Peter Bird; and William Turner and Sally Turner owned and conveyed Lot 3 to

Mary Kirkwood and Dan Rue. CP 255-256. Ed does not have unity of title or subsequent separation over Lot 1 or Lot 3 on Goodman Lane.

Issue No. 2. No Continuous Usage before 1980.

Ed conveyed Lot 2 of short plat 55-80 Ex.1 to Mike by quit claim deed in 1980 Ex 17. Ed has no continuous use over Goodman Lane or Mike's Lot 2 before 1980. Ed did not build his home and become a resident of his Lot 3 until 1991, he was living in Burlington, Washington.

Ed's testimony on his residence in Burlington until 1991. RP 68.

**Q. As part of your job as the Chief of the Police were you required to live the Burlington city limits? A. Not within the city limits but within a fairly close response time, yes.**

**Q. And that excluded you from living out by Lake Campbell? A. Yes, for a number of years.**

Ed's testimony when he moved to Lot 3 in Anacortes. RP 128.

**Q. And your house was built in '91, correct?  
A. That's correct.**

Issue No. 3. No Necessity.

**A. Implied Reservation.** Ed testified he did not intend to put easements thru Mike's Parcel RP 77.

**Q. So did Mike pick Lot 2? A. Yes, Mike picked Lot 2. Q. And what was the purpose of Exhibit 18, which is what you described as an easement? A. When we got together and discussed this, Mike says, well, if you sell your property, I don't want to have an easement through my property, and I thought okay. We'll do that. It was supposed to be for us. So if I was to sell it, the party that bought it from me would not get that easement.**

Mike testimony. RP 202.

**Q. When you received your property from your brother in September of 1980, okay -- A. Yes. Q. -- did you understand you were giving him an easement over your property? A. No. Q. Your brother testified that there was a discussion about access to the beach would only stay as long as Ed and Bernice were alive. Do you remember any discussion about that? A. No.**

**B. Injury to Mike's Property.** The road easement is 20' wide, and with the required 35' building setback makes it impossible for Mike to build. Along with the 100' x 100' septic easement. CP 108. Appraiser Dan Hewitt found the damage to Mike's Lot 2 so

extensive he had no frame of reference. CP 336. The trial court did not compare the injury between parties. Ed has no evidence of injury to his Lot 3.

**C. Ed's own easement and septic.** Ed has no evidence of necessity to use Mike's Lot 2. The site visit by the trial court proved that Ed can use his own ingress egress easement he created on short plat 55-80 thru Lot 4 Ex 1. Ed also has a driveway from his easement that vehicles get stuck, used by Ed's father J.J before 1977. CP 507-526. Ed used the easement on his building permit in 1991. CP 226.

**D. Shoreline Management Act.** This is a road easement along the beach front of Mike's Lot 2, overgrown with grass. CP 507-526. This road damages the vegetation, habitat, and visual aesthetic of Mike's entire Lakefront. Ex 38-40.

Issue No 4. False 1979 road build date.

Ed hand wrote the road build date 1979 on Ex 4-7, after he changed it from 1977. Ed testimony on the change RP 59.

**Q. Okay. But you put those three pictures together and wrote 1977?**

**A. Yes, I did. That was a mistake.**

**Q. And my question to you is when and how did you determine that there was a mistake? After you put these pictures together, put them on paper, submitted them, how did you then go back and determine these are not '77?**

**A. Looking at the pictures, it dawned on us that we had the wrong date down there.**

Ed had incentive to change the date as a 78' aerial showed no road existed. CP 200. Mike's testimony was the road build date was 1986 RP 213.

**Q. When was that put in? A. 1986. Q. And how do you know that? A. That was the year that they couldn't use the boat launch, the State boat launch, and involved my property to harvest milfoil from Lake Campbell, and the County came in and put gravel in and a road grader and created a little area in front of my place to where they could bring in a dump truck and fill it up and turn it around and get it out of there.**

Mike also admitted aerial photo Ex 31 and Ex 32 which proved no road existed in 1979. Terry A. Curtis, an expert from the Department of Natural Resources in aerial photography concluded no road existed in 1979. CP 111-120. It errors in law as there is no apparent usage before 1980. Conclusion of Law #4.

#### IV. SUMMARY ARGUMENT

Factually, Ed can drive thru his easement on Lot 4 Ex 1 to his property and drive approximately 500' to the base of the rounded 80' knoll Ex 22, Ex 28, CP 199. Ed's entire case is he has a slope (some of which is drivable) on the last small part of his driveway. He can make this last part drivable for 13k. CP 340. This is no cause of complaint for equitable relief to his home and equitable relief all the way to his beach.

Ronald Torrence, who created short plat 55-80 Ex 1 declared "the County Code required lot 2 and Lot 3 to have separate access roads to Campbell Lake Road. A non-exclusive easement was put over lot 4 for access to lot 3. No easement was included on the plat map that would allow lot 3 access to Campbell Lake Road through lot 2. No easement was included on the plat that would allow lot 3 to access the beachfront of the lake through lot 2." CP 37-38. Diagram of Ed's own road easement thru Lot 4 and driveway from Lot 4 onto his property page 12. CP 79.



## V. ARGUMENT

An implied easement (either by grant or reservation) may arise, 1) when there has been unity of title and subsequent separation; 2) when there has been an apparent and continuous quasi easement existing for the benefit of one part of the estate to the detriment of the other during unity of title; and 3) when there is a certain degree of necessity that the quasi easement exist after severance. *Adams v. Cullen*, 44 Wn.2d 502, 505, 268 P 2d. 451 (1954).

Intent to create an easement is “the cardinal consideration” in determining an implied easement. *Id* at 505. The higher standard required for an implied reservation is due to the fact that an implied reservation “is in derogation of the deed and its covenants, and stands upon narrower ground than a grant.” *Id*.

### Issue No. 1. No Unity over Goodman Lane.

Unity of title and subsequent separation is an absolute requirement *Adams*.

Conclusion of Law #6:

An easement implied from prior use has been established by the Plaintiffs as to the roadway constructed in 1979, **including Goodman Lane** and the roadway down to and across the lake front of Lot 2, and as to the septic system installed as described on page 5 of Exhibit 20.

Goodman Lane exists on Lot 1 and Lot 3 of short plat 61-89 Ex 27. Short Plat 61-89 gives no easement rights to Ed. Ed did not own or convey those Lots. CP 255-256. Ed has no unity of title or subsequent separation over Lot 1 and Lot 3, Goodman Lane, and fails to meet the first required element and errors in law.

Issue No. 2. No Continuous Usage Before 1980.

Prior use of the quasi easement by the common grantor must also be continuous. *Bushy v. Weldon*, 30 Wn.2d 266, 191 P.2d 302 (1948); *Bailey v. Hennessey*, 112 Wash. 45 (1920). Continuous use is required to support the implication that servitude of the land is impressed permanently. *Ashton v. Buell*, 149 Wash. 494, 271 P. 591 (1928).

Conclusion of Law #4: The usage was apparent.

*Continuous usage* was completely omitted by the court and errors in law. Ed testified on his usage. RP 136.

**Q. And when you deeded it to him in September, you had no home up there. That was 10-ish years later, correct? A. We had a trailer up there in '82 that we traveled at, but we did not build a home until 1991.**

Ed has no evidence of continuous use over Goodman Lane.

Issue No. 3. No Necessity.

**A. Implied reservation.** This is an *implied reservation* as Ed (grantor) seeks to retain an easement in favor of the parcel he *retains*. A higher degree of necessity is required *Adams*.

Conclusion of Law #5: The usage was reasonably necessary.

The application of the wrong degree of necessity is an error of law.

**B. Injury to Mike's Property.** In deciding whether an easement option is "reasonable", the court must look at the relative cost to one party versus probably injury to the other. *Samish River Boom Co. v. Union Boom Co.*, 32 Wash. 586, 601; 73 P.670 (1903).

Ed has no evidence of relative cost. The survey locates the easements that fetter and shackle Mike's parcel and destroy the value, making it impossible to build. CP 108. Local appraiser Dan Hewitt found it was the most intrusive easement he had ever seen and the damage was so great there was no frame of reference. CP 336.

C. **Ed's own easement and septic.** The party claiming the easement must show an inability to create a substitute easement at a reasonable cost on his or her own estate without trespassing on his or her neighbors. *Berlin v. Robbins*, 180 Wash. 176, 38 P.2d 1047 (1934).

Factually Ed has his own ingress egress easement thru Lot 4

**Fact 47) This 20 foot wide easement could be used by Ed and Bernice Goodman to reach the northern part of Lot 3.**

Ed can get hundreds of feet onto his own property. Ed's brother Joe Goodman's testimony on the driveway from Lot 4 onto Ed's property. RP 45.

**Q. You're aware that Lot 3 has an easement through Lot 4 to get down to that section you were pointing to, correct? A. Yes, I am.**

**Q. Do you remember ever using that road to go down that direction? A. I can remember being towed up out of there several times.**

Ed's testimony on the use of his driveway from Lot 4. RP

54.

**Q. Joe testified that he was towed out of there? Do you recall anybody having to be towed out of this bog? A. Oh, yes. I remember my dad with the tractor having to be towed out of there when he was alive.**

Ed's testimony on his own septic system on Lot 3. RP 132.

**Q. You currently have a septic system on your property? A. That's correct.**

The existence of Ed's ingress egress easement and septic system defeats any implied easement from prior usage. Hundreds of feet onto Ed's property there is a slope up to Ed's house but Mike has found a road builder that could complete that part for only 13k CP 340.

D. **Shoreline Management Act.** The necessity to put a road across Mike's entire Lakefront on the very edge of the Lake is a violation of the Shoreline Management Act RCW 90.58. The road easement is within the 200' setback required by the statutes that precludes substantial develop and use that would harm the shoreline.

Issue No 4. False 1979 road build date.

The trial court abused its discretion to find the 1979 road build date. Ed's admitted exhibits and testimony is incompetent evidence. Ed also gave 79',80',81' road build dates in his deposition. CP 332. Ed gave contradictory testimony that no road existed before 1980. RP 136-137.

**Q. In 1980 you didn't have a trailer there. It was just transient, come and go, recreational, stay occasionally-type experience?**

**A. No. We had a trailer down where you come into the woods before the road was built up the hill by Craig Construction.**

The 1979 date is a recent fabrication by Ed. Terry A Curtis, is a certified photogrammetrist and concluded the road did not exist. CP 111-120. Ed has no apparent usage before 1980 and errors in law.

## VI. CONCLUSION

The court should find the trial court erred in law as there is no unity over Goodman Lane, no apparent and continuous usage before 1980, no necessity to use Mike's property. The 1979 road build date is false.

Therefore, Appellant respectfully request this Court to reverse the decision. And award statutory damages to Mike for restoration of his shoreline.

Respectfully submitted this 29<sup>th</sup> day of October 2012.

Michael J. Goodman  
Michael J. Goodman  
13785 Goodman Lane  
Anacortes, WA 98221  
(360) 293-3298

None of the earlier aerial photographs reviewed (1962 through 1978) showed any visible evidence of a road extending down the slope, or traversing across the parcel near the lakeshore.

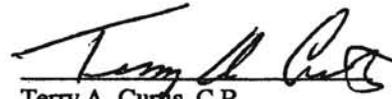
**Conclusions:**

Based primarily on the stereoscopic analysis of the 1983 and 1987 aerial photography, and also the brief examination of prior aerial photos, plus information gathered from other data sources, I have formed the following opinions and conclusions:

- A. There was no road accessing or crossing the lakeshore area on the Goodman parcel in 1983.
- B. The first photographic evidence of such a road appears in the 1987 aerial photography.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 30<sup>th</sup> day of August, 2011

  
 Terry A. Curtis, C.P.

STATE OF WASHINGTON )  
 ) ss  
 COUNTY OF THURSTON )

SIGNED AND SWORN to (or affirmed) before me on August 30 ~~September~~, 2011, by Terry A. Curtis.



  
 Print Name: Robert L Anderson  
 Notary Public Residing at Tumwater  
 My appointment expires May 15 2014

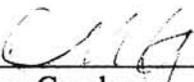
DECLARATION OF TERRY A. CURTIS - 5

Michael and Mary Goodman  
 13785 Goodman Lane  
 Anacortes, WA 98221

Acknowledgment of Service

I served a copy of this Motion in Brief and Appellants Brief and a CD copy of the Report of Proceedings, and one copy of the report of proceedings to which this acknowledgment of service is attached onto respondents attorney at the address and in the manner indicated below on this 24<sup>th</sup> day of October, 2012.

C. Thomas Moser	<input checked="" type="checkbox"/> U.S. Mail
Attorney for Respondents	<input type="checkbox"/> Email
1204 Cleveland Ave.	<input type="checkbox"/> Hand Delivery
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