No. 316815-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

WILLIAMS PLACE, LLC, a Washington limited liability company,

Appellant,

v.

THE STATE OF WASHINGTON, by and through the Department of Transportation,

Respondent.

APPEALED FROM WHITMAN COUNTY SUPERIOR COURT
CAUSE NO. 07-2-00244-6
THE HONORABLE DAVID FRAZIER

WILLIAMS PLACE'S REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Regulations

Appendices

I. INTRODUCTION

"Everyone gets so much information all day long that they lose their common sense."[1]

WSDOT convinced the Trial Court to ignore common sense and black letter law that established Williams Place had its access taken. In September 2007, WSDOT eliminated Williams Place's ability to use Garrison Road by destroying the Paradise Creek bridge. For 125 years prior, Garrison Road provided Williams Place access to the SR 270 connection. The day WSDOT destroyed the bridge, Williams Place was landlocked. Contrary to Washington law, WSDOT claims the 1935 vacation of the public easement landlocked the property.

WSDOT's response is rife with conclusory assertions intended to mislead the Court from the clear-cut issue. In Washington a plethora of access and property rights exist that are not contained within a "title". Likewise, even non-abutting landowners can have the right to access.[2] As explained below, WSDOT's

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[1] Gertrude Stein.

[2] See Union Elevator v. State, 96 Wn. App. 288, 296 (1999). When Union Elevator was remanded, Counsel for Williams Place tried the case to a jury and prevailed. Like this case, in Union Elevator, WSDOT also took untenable positions to try to avoid its constitutional obligation.

argument collapses under the weight of legal authority recognizing that as an abutting property to Garrison Road, upon vacation, Williams Place retained a private easement to continue using Garrison Road to access the public road system. The record confirms that no one has ever taken, purchased, denied, or blocked that private easement. Consequently, WSDOT's claim the vacation caused it to be land-locked (a claim contrary to the evidence and historical photographs) fails as a matter of law. Thus, it is undisputed that WSDOT's action resulted in the access to Williams Place being eliminated without payment of Just Compensation. Therefore, the Trial Court should be reversed.

II. RE-STATEMENT OF THE ISSUES

The only "facts" presented show that for 125 years, the Garrison Road route was used to access the Williams Place Property. WSDOT did not present any "facts" to the contrary. WSDOT's defense rests on its claim the Garrison Road vacation eliminated the access. The appeal can be decided as a matter of law based upon the answer to this question:

> Under Washington law, do property owners that abut a vacated, platted public roadway retain a private

easement across the former public road to continue to access their property?

Washington law and common sense dictate the answer is yes.

III. RE-STATEMENT OF THE CASE

A. History of Garrison Road and Access To Williams Place.

1. Pre-1886.

WSDOT does not dispute Williams Place property abuts Garrison Road, which prior to the 1935 vacation was a public county road that crossed the Rail Easement and Paradise Creek. As a County Road, by law Garrison Road was Platted in 1881. See Code of 1881, § 3047. In 1886, Pinnell, the original owner of the Williams Place property, provided the railroad easement that dissected the Williams Place property. CP 297-299. Pinnell owned property on both sides of the rail easement and crossed both the rail easement and Paradise Creek using Garrison Road, a public roadway.

2. 1886 – 1935.

During this period, Garrison Road constituted the Moscow/Pullman access for properties in the area. Garrison Road provided the Williams Place access, including across the rail

easement dissecting the Williams Place property and across Paradise Creek via a bridge.[3] Between 1888 and 1920, the Williams Place property was sold four times. CP 104. During each transfer, Garrison Road was a platted, public road and provided the sole access to the property.

In 1933, Whitman County began construction of a new Pullman/Moscow road (SR No. 11). CP 116. Williams Place predecessors provided an 80' right of way over their property to allow construction of SR No. 11.[4] CP 96. The acquisition did not include buying access. Indeed, the construction of SR No. 11 included construction of the access connection to Garrison Road (the connection at issue in this litigation). Garrison Road connected to SR No. 11 and provided access to the Williams place property via the Paradise Creek bridge. See CP 111. At this time, Williams Place predecessors owned the land all the way to SR No. 11 with the rail easement dissecting the property. Access to SR No.11 was via Garrison Road by crossing over the rail easement, over the Paradise

[3] There was nothing "temporary" about a the bridge crossing Paradise Creek. There had been one at that location for 125 years before WSDOT had the commercial bridge destroyed.
[4] SR No. 11 later became SR 270.

Creek bridge and using the access connection to SR No. 11. See CP 113.

In 1935, Whitman County vacated Garrison Road. CP 102-103. Notably, the County did not close or otherwise eliminate the connection to SR No. 11. There simply is nothing in the record suggesting that the Garrison Road private easement which was created as a matter of law was eliminated at this time. Indeed, Williams Place predecessors continued to use the vacated Garrison road route including crossing the railway easement, and the Paradise Creek bridge to access the Williams Place property. CP 87; see also CP 326-327. This access route was never closed.

3. 1935-1950.

From 1935 on, the Garrison Road route continued to be the access for the Williams Place property, including crossing the rail easement dissecting the property and was the connection to SR No. 11. CP 87; see also CP 326-328. In approximately 1950, WSDOT acquired property located between the highway and the rail easement to widen the right-of-way. See CP 105-110; CP 161. Notably, WSDOT did not acquire or close the Garrison Road connection to

SR No. 11 and did not remove or close the Paradise Creek Bridge. See CP 107. After WSDOT's acquisition, the evidence established the access connection was left open and the property continued to be accessed the same as it had since 1882, by using the Garrison Road route. See CP 87; see also CP 326-328.

4. 1950 – 1990.

The property continued to be accessed by using the Garrison Road route. CP 88. Throughout this time, the Jorstads repaired, maintained, and used the Paradise Creek bridge to access their property. CP 87. The undisputed evidence confirmed the Garrison Road route was used to access the Williams Place property through the decades, that the connection to SR 270 existed, and the connection existed as of 1990. Aerial photographs confirm this fact and clearly show the Garrison Road route. See CP 364 (1968); and CP 365 (1987).

5. 1990 – 2007.

Prior to 1990, Williams Place had rebuilt and maintained the Paradise Creek Bridge that connected to the SR 270 connection. See CP 249 ("*The rebuild consisted of adding new stringers and*

decking"). *"Between 1974 and 1998, the bridge was used to access the Williams Place property including heavier farm equipment."* CP 249. See also CP 252 (*"After 1998 we used the bridge for light vehicles."*)

In 2001, without notice to Williams Place, WSDOT granted the neighbor to the east, the Motleys, an access connection permit at milepost 6.9 to upgrade the existing connection to allow commercial use. CP 151-158; see also CP 87. While not a commercial connection, the existing connection had existed since 1933. The request to increase the access to a commercial connection was not discussed with Williams Place. CP 250. At no point did WSDOT ever provide Williams Place notice claiming either the existing access or the bridge did not comply with Washington law. CP 251. Nor did WSDOT ever provide notice to Williams that it intended to close the SR 270 connection that had existed since 1935. Id. WSDOT's response glosses over the fact that Motely was obtaining permission to increase an existing connection to a commercial use. This is similar to Northwest Paving's 1970 request to use the existing access connection for a commercial use. CP 128. A request

WSDOT granted on the condition that the "abutters to the west" be provided continued use of the existing access. CP 130.

WSDOT allowed Motley to upgrade the Paradise Creek Bridge to a new commercial bridge. CP 52. Motley's plans showed that there was an existing bridge over Paradise Creek. CP 59 (*"Exist Bridge 24x36"*). The Williams Place property continued to be accessed by the Garrison Road route using the new Paradise Creek bridge just as it had using the prior bridge.

In 2001, WSDOT had approved SR 270 construction plans that acknowledged William's Place's access rights by providing for a frontage road to maintain access to the Williams Place property. See CP 169-170; see also CP 48.[5] However, in 2004, WSDOT eliminated this proposed frontage road. CP 162. In September 2007, without notice to Williams Place, WSDOT landlocked the Williams Place property by directing Motley to destroy the bridge. CP 251. WSDOT did not require the restoration of the pre-existing Paradise Creek bridge access. CP 151-158. WSDOT did not provide for any alternate access by way of a frontage road or an

[5] Indeed, historical maps and plans consistently show the bridge and the former Garrison Road route as connecting the Williams Place property to SR 270.

alternative to crossing Paradise Creek to access the Garrison road route. As a result, WSDOT eliminated the access to the Williams Place property via the Garrison Road route which had been used from 1882 – 2007. CP 86-88; CP 326-328.

IV. ARGUMENT

A. Williams Place's Motion for Partial Summary Judgment Should Have Been Granted.

1. Williams Place Had A Legally Created Private Easement In Garrison Road That Provided Access.

When property owners abut a public road, by law a private easement is created for their benefit. Thus, it is well established that only the public aspect of the easement is eliminated by vacation of a public road. See Howell v. King County, 16 Wn.2d 557, 559-560 (1943). If the road is used to access abutting property, the vacation does not eliminate the private easement necessary for the use and benefit of the adjacent property. Id. See also, Curtis v. Zuck, 65 Wn. App. 377, 378-379 (1992). The owner of property abutting a public thoroughfare has a right to free and convenient access. Walker v. State, 48 Wn.2d 587, 589-90 (1956). Here, the private easement was created prior to the rail easement and continued after.

Hence, the discussion by WSDOT with regard to the rail easement is not relevant. The private easement using the Garrison road route and crossing the rail was created by law and was used for 125 years!

WSDOT fails to offer any legal authority disputing the existence of a private easement that is not eliminated when the public easement is vacated. Without any legal authority, WSDOT claims the private easement is only created in instances where a roadway is not opened. However, that argument is illogical and ignores the fact that the private easement arises as a result of the recognized right that abutting property owners have to public roadways. Thus, it is even more applicable when the landowner uses the public roadway for access both before and after vacation.

WSDOT does not address the substantial precedent establishing this basic legal principle that prevents the vacation of a public roadway from land-locking real property. WSDOT's argument is also contrary to the public policy of the State of Washington to prevent landlocking properties. See Sorenson v. Czinger, 70 Wn. App. 270, 278 (1993); and Hellberg v. Coffin Sheep Co., 66 Wn.2d 664, 666-67 (1965). Consistent with that

policy, the vacation of a public roadway does not eliminate the private easement. See Private easement in way vacated, abandoned, or closed by public,150 A.L.R. 644, citing Howell, 16 Wn.2d 557; Rowe v. James, 71 Wn. 267 (1912); Van Buren v. Trumbull, 92 Wn. 691 (1916); Fry v. O'Leary, 141Wn.2d 465 (1927); Brown v. Olmsted, 49 Wn.2d 210 (1956); Humphray v. Jenks, 61 Wn.2d 565 (1963) (Vacation of platted street terminates all interest of the public, but does not affect private easements over the streets by those who have purchased with reference to the plat and in reliance thereon); and Adams v. Skagit County, 18 Wn. App. 146 (1977)).

Washington law is in accord with the majority on this issue. See e.g. Denver Union Terminal R. Co. v. Glodt, 186 P. 904, 906 (Colo. 1919)(On vacation of a street, abutting landowners have private easements as necessary to access a public highway.); Rensselaer v. Leopold, 5 NE 761, 763 (Ind. 1886)("*That the owners of lots abutting on a street have a peculiar and distinct interest in the easement in the street is a well-established doctrine of law.*"); Bigelow v. Ballerino, 44 P. 307 (1896)(Unless the private easement is specifically acquired, the landowner retains the right to use the

discontinued roadway.); Powell v. Spartenburg Co., 134 SE 367, 368 (1926)(abutters to vacated roadway could not be legally deprived of the privilege to continue to use the road to maintain access); Macfarlane v. Davis, 147 S.W.2d 528, 531 (1940)(despite the vacation of the roadway, a private easement remained preventing the county from destroying a trestle that provided access on the route); Holloway v. Southmayd, 34 N.E. 1047, 1050 (1893)(conveyance of land abutting public roadway creates a private easement that survives end of public easement); Anderson v. Fay Imp. Co., 286 P.2d 513, 517 (1st Dist. 1955); Chaput v. Clarke, 603 A.2d 1195, 1197 (1992)(public highway creates public easement for general public and a private easement of access permitting landowners who abut to have access.); Hughes v. State of Idaho, 328 P.2d 397, 401 (1958)(owner of land abutting a public road has a private right that is distinct from the public), overruled on other grounds as recognized by Moon v. North Idaho Farmers Ass'n, 96 P.3d 637, 643 (2004); Lower Payette Ditch Co. v. Smith, 254 P.2d 417, 420 (1953)(private easement exists allowing continued use of highway after vacation); Hylton v. Belcher, 290 S.W.2d 475, 477 (Ky. 1956)(abutting

property owner retains a private easement after county road abandoned); Wynia v. City of Great Falls, 600 P.2d 802, 810 (1979)(When a city vacates a street, abutting owners' right of access through the vacated roadway must not be impaired); Dell v. City of Lincoln, 102 N.W. 2d 62, 66 (1960)(abutters have a private easement that survives vacation of public road); Greenberg v. L.I. Snodgrass Co., 119 N.E.2d 114, 117 (1st Dist. Hamilton Co. 1953); Oklahoma Turnpike Authority v. Chandler, 316 P.2d 828, 830 (Okla. 1957); Knierim v. Leatherwood, 542 S.W.2d 806, 810-811 (Tenn. 1976); and Gillmor v. Wright, 850 P.2d 431, 437-438 (Utah 1993).

Garrison Road was part of the "platted" road system for Whitman County and identified in the "Highway Plat Book". See Code of 1881, Sec. 3047. While platted and prior to vacation, the property was transferred 4 times between 1888 and 1920. CP 104. Garrison Road provided the access to Williams Place both before and after 1935. As a result, when Garrison Road was vacated, as an abutting property, Williams Place retained a private easement across the old Garrison Road route that existed as a matter of law. Supra.

WSDOT has not identified any law or facts that provide otherwise. Nor is there any evidence WSDOT or anyone else ever acquired that Private Easement.

2. The Bridge Removal Resulted In The SR 270 Access Connection Being Eliminated.

The record confirms the destruction of the Paradise Creek bridge resulted in the SR 270 connection being closed. WSDOT made the decision to argue over the rights of others and claim no access existed based on the 1935 road vacation. However, as explained above, Williams Place had a legally created private easement that provided access. Since WSDOT's *"landlocked in 1935"* theory fails as a matter of law, there is no issue of material fact remaining with regard to the taking of the access connection.

B. If The Private Easement Is Not Recognized, Genuine Issues Of Material Fact Exist Which Require Trial.

The moving party must prove by uncontroverted facts that there are no genuine issues of material fact. Jacobsen v. State, 89 Wn.2d 104, 108 (1977), overruled on other grounds by Peeples v. Port of Bellingham, 93 Wn.2d, 766, 771 (1980). The facts submitted and all reasonable inferences from those facts are considered in the

light most favorable to the non-moving party. Sec. State Bank v. Burk, 100 Wn. App. 94, 97 (2000). The Trial Court ignored the facts establishing that Williams Place property had been accessed by Garrison Road since 1882. CP 87. Even if the Private Easement did not exist, there remains genuine issues of material fact with regard to the access.

1. Evidence Supporting An Implied Easement Exists.

An easement can be implied from prior use. Landberg v. Carlson, 108 Wn. App. 749, 757 (2001). WSDOT claims the vacation eliminated all right and title to ½ of the roadway which then vested to the respective abutting owners.[6] As a result, the common grantor of the property that each abutter obtained would have been the County. The law relating to the U.S. being the original grantor is not relevant to the analysis because under WSDOT's theory the grant of the roadway property occurred not with the original Motley/Williams Place patent, but instead from the County with the vacation of the road. Consequently, because an easement can be implied based upon prior use and the parties intent, the facts and

[6] In reality, by law the "title" referenced would have been subject to the Private Easement that remained. Supra.

circumstances in this case (more than 125 years of continuous use of the Garrison Route) confirm that when considered in the light most favorable to Williams Place, the facts create a genuine issue of material fact. Roberts v. Smith, 41 Wn. App. 861, 864 (1985). Similarly, if there were no private easement created by law, the fact the County relinquished the property by vacating the public road would also support the finding that an easement be implied by necessity due to the fact that after severance use of the road and crossing over the railroad remained the sole means of ingress and egress from the property. See Dawson v. Greenfield, 118 Wn. 454, 457 (1922).

2. Evidence Supports a Prescriptive Easement.

Williams Place also presented evidence supporting an easement by prescription based on more than ***70*** years of use following the 1935 vacation. See 810 Properties v. Jump, 141 Wn. App. 688, 700-01 (2007). As soon as there is proof that use of another land has been open, notorious, hostile, continuous, uninterrupted and for required time, the presumption of permissive use disappears, and the one claiming the easement has established a

prima facie case. See Anderson v. Secret Harbor Farms, 47 Wn.2d 490, 494 (1955). Then, it becomes incumbent on the one denying the easement to controvert the prima facie case and whether use is permissive becomes a question of fact. Id. The Trial Court incorrectly presumed the use was permissive despite the long open and notorious use. Such long use should not be ignored and creates a question of fact. "*The extensive, continuous, and uninterrupted, use of the road for such a very long period of time must be given weight in deciding issues presented.*" Long v. Leonard, 191 Wn. 284, 295-6 (1937); see also Cuillier v. Coffin, 57 Wn.2d 624, 627 (1961)(Unchallenged use of private road for prescriptive period is a circumstance indicating adverse use, particularly if a non-owner constructed road); and Miller v. Jarman, 2 Wn. App. 994, 997 (1970)(Unchallenged use of easement for prescriptive period is circumstance from which inference of adverse use may be drawn.). An additional factor is the fact this was an existing route that provided the access to the Williams Place property from 1935 – 2007. See Wasmund v. Harm, 36 Wn. 170, 173 (1904).

Finally, the continued use of Garrison Road after 1935 to access the SR 270 connection also presented evidence supporting the establishment of an easement by prescription for a public way. See Primark, Inc. v. Burien Gardens Associates, 63 Wn. App. 900, 905 (1992). Based upon the type, length, and necessity of the use Garrison Road after 1935, genuine issues of material fact existed.

C. WSDOT's Prior Acquisitions Did Not Include Access.

WSDOT argues access was paid for because of the "1933 and 1950 right-of-way acquisitions".[7] However, neither acquisition included the taking or elimination of the SR 270 access connection or eliminating the private easement allowing continued use of the Garrison Road route. The 1933 acquisition was to construct SR 11. That included creating, not taking, the access connection at issue. Likewise, the 1950 acquisition also did not include the taking of the access or eliminating the private easement. A fact confirmed by the historical photographs. In 1933 and 1950, the projects simply did not include the acquisition of the access or the private easement.

[7] This appears to be a new argument.

D. HAMA Does Not Apply Because The SR 270 Access Connection Existed In 1990.

WSDOT intentionally and continually refuses to discuss the access connection and its use by Williams Place in connection with the private easement that provided for the continued use of the Garrison Road route for 70+ years following the vacation. Access connections that were in existence on July 1, 1990 do not require a permit. RCW 47.50.080. It is undisputed that the access connection at issue was in existence beginning in 1933 when it first connected Garrison Road to what would become SR 270 and was still in existence and use prior to and on July 1, 1990. CP 249; and CP 365. Thus, this grandfathered connection was not subject to HAMA permits. Apparently, WSDOT now claims that the access connection is not grandfathered based on its *"landlocked since 1935"* argument. By regulation, WSDOT provides that an owner of property with a legal easement to the state highway where limited access rights have not been acquired has a right to reasonable access. WAC 468-51-030.[8] As explained above, when Garrison Road was vacated in 1935, by operation of law Williams Place had a Private

[8] This is also why Union Elevator is applicable to this case.

Easement for the continued use of Garrison Road route to access the public highway. As a result, WSDOT's claim the connection is not "grandfathered" is inaccurate.

Furthermore, WSDOT did not take any steps to close this unpermitted and grandfathered connection. WAC 468-51-130 and RCW 47.50.040. It is also undisputed that when Motley obtained a permit to increase the connection to a commercial use, Williams Place was not notified as required by law. WAC 468-51-030. As a result, even if the commercial use by Motely was only for a prescribed period of time, WSDOT did not take any of the required steps to close the existing connection that provided access to Williams Place. WSDOT has not identified any evidence that it provided any of the notice and due process for any such action.[9]

E. Prior To This Litigation, WSDOT Recognized The Access Right.

It is telling that WSDOT fails to address in any substantive manner the fact that the position its lawyers have taken in this case is contrary to WSDOT's own assertions over the past 37 years.

[9] The private easement also was not extinguished by abandonment. Even if the uncredible Motely declaration is considered, extinguishing an easement through abandonment requires more than mere nonuse. Heg v. Alldredge, 157 Wn.2d 154, 161 (2006).

WSDOT had repeatedly acknowledged and confirmed the existence and use of the access connection by Williams Place. These facts alone should have been viewed in a light favorable to Williams Place and placed before the jury to determine if there was a taking or damaging of property rights.

In 1970, when WSDOT issued a "business type approach" permit that would allow the connection to increase from farm access to business, WSDOT explicitly recognized the interest in the connection – *"This approach is for joint use with the abutters to the west."* CP 122-137; see also CP 145. WSDOT also recognized the existing bridge was used for such access. See CP 133 - *"existing bridge"* abutments. In the 2000's, WSDOT recognized in an appraisal that Williams Place had a right of access. *"The portion of the ownership on the right, south of SR-270 also has farm access."* CP 140. In 2007, WSDOT recognized that the 1970 permit confirmed the right to a *"shared access"* that WSDOT staff was *"unaware of"*. CP 145.

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F. WSDOT Lacks Standing For Its Arguments.

A review of WSDOT's Response and the arguments it made at the Trial Court level establish that it was, and is attempting to create a dispute where one does not exist and for which it lacks standing. The issue in this litigation is whether or not WSDOT's conduct resulted in the taking or damaging of Williams Place property rights in **2007**. WSDOT claimed that no property right existed because it refused to recognize that an easement existed over the Garrison Road route. As set forth above, this argument fails because by operation of law a private easement existed which included the right to cross the rail easement. Nonetheless, despite the fact that for more than 70 years neither the railroad nor the County ever disputed that right and had never denied Williams Place the right to use the private easement, WSDOT argued the rail's position.

In 2007, WSDOT's conduct landlocked Williams Place. Then, in this litigation, WSDOT attempted to assert rights of a non-party. Because Williams Place was left landlocked, WSDOT's argument placed Williams Place in the position of needing to

determine whether the County/Railroad was going to take the position that Williams Place did not have a private easement to cross based upon the Garrison Road route. As a result, after WSDOT had confused the Trial Court in 2008 with regard to the rail easement, Williams Place filed an action to obtain fee simple title to force the Railroad/County to disclose what position would be taken. CP 609-616. The defendants in that action claimed that jurisdiction existed only in Federal Court. CP 622. As a result, Williams Place dismissed the action and filed an action in Federal Court seeking fee simple title based upon the applicable law. CP 620-630. As Williams Place suspected, while the County/Railroad did not want to lose title to the land now used for a trail, they also did not dispute or fight over the easement that had been used to access Williams Place for 125 years. Consequently, the parties reached agreement and Williams Place was provided a recorded easement going forward. The issue of the validity of the Private Easement through 2007 was never at issue or litigated.

In a continued attempt to avoid addressing its own conduct and the law, WSDOT blatantly and unabashedly misrepresents the

litigation with the Railroad to this Court. First, Williams Place did not "lose" the quiet title action. To the contrary, the action served its purpose and confirmed that neither the Railroad nor the County wanted to litigate the issue that WSDOT was attempting to raise on their behalf. Second, no court ever *"rebuffed attempts to establish ownership"*. Indeed, the issue was not litigated because the parties reached agreement and Williams Place dismissed its action without prejudice. Third, "the state and federal courts" did not "rule otherwise". The issue was not litigated and there was no decision by any court on the issue. If the issue had been litigated, as pointed out in the prior briefing, Williams Place had substantial legal authority supporting its position that it has the right to fee simple ownership of the former rail easement. Furthermore, although the private easement was not at issue, Williams Place has that right as a matter of law. Supra.

The fact is that WSDOT claimed Williams Place did not have a right of access because of the vacation of Garrison Road. As set forth above, as a matter of law, Williams Place maintained a private easement to continue to use the Garrison Road route. Therefore,

WSDOT's arguments fail as a matter of law and the Trial Court's rulings should be reversed.

V. CONCLUSION

Based upon the foregoing, Plaintiff Williams Place respectfully requests the Trial Court's decision granting WSDOT's Motion for Summary Judgment be reversed and Williams Place's Motion for Partial Summary Judgment either granted leaving only the issue of just compensation for trial or the case remanded for trial.

DATED this 23rd day of December, 2013.

DUNN BLACK & ROBERTS, P.S.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of December, 2013, I caused to be served a true and correct copy of the foregoing document to the following:

☐	HAND DELIVERY	Frank Hruban
☒	U.S. MAIL	Assistant Attorney General
☐	OVERNIGHT MAIL	1116 W. Riverside Ave.
☐	FAX TRANSMISSION	Spokane, WA 99201
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☐	HAND DELIVERY	David J. Groesbeck
☒	U.S. MAIL	Groesbeck Ewers, P.S.
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☒	EMAIL	

KEVIN W. ROBERTS

Code of 1881 § 3047

Sec. 3047. If the same, or what is equivalent thereto, has not heretofore been done, the county auditor shall within six months after this act takes effect, cause every public road in his county, the legal existence of which is shown by the records and files of his office, to be platted in a book to be obtained and kept for that purpose, and to be called the "highway plat book." Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the highways, legally established, immediately entered upon said plat book, with appropriate references to the files in which the papers relating to the same may be found.

Sec. 3048. The expenses, incurred by the provisions of this chapter, shall be paid out of the county funds not otherwise appropriated.

RCW 47.50.080

Permit removal.

(1) Unpermitted connections to the state highway system in existence on July 1, 1990, shall not require the issuance of a permit and may continue to provide access to the state highway system, unless the permitting authority determines that such a connection does not meet minimum acceptable standards of highway safety. However, a permitting authority may require that a permit be obtained for such a connection if a significant change occurs in the use, design, or traffic flow of the connection or of the state highway to which it provides access. If a permit is not obtained, the connection may be closed pursuant to RCW 47.50.040.

(2) Access permits granted prior to adoption of the permitting authorities' standards shall remain valid until modified or revoked. Access connections to state highways identified on plats and subdivisions approved prior to July 1, 1991, shall be deemed to be permitted pursuant to chapter 202, Laws of 1991. The permitting authority may, after written notification, under rules adopted in accordance with RCW 47.50.030, modify or revoke an access permit granted prior to adoption of the standards by requiring relocation, alteration, or closure of the connection if a significant change occurs in the use, design, or traffic flow of the connection.

(3) The permitting authority may issue a nonconforming access permit after finding that to deny an access permit would leave the property without a reasonable means of access to the public roads of this state. Every nonconforming access permit shall specify limits on the maximum vehicular use of the connection and shall be conditioned on the availability of future alternative means of access for which access permits can be obtained.

[1991 c 202 § 8.]

RCW 47.50.040

Access permits.

(1) No connection to a state highway shall be constructed or altered without obtaining an access permit in accordance with this chapter in advance of such action. A permitting authority has the authority to deny access to the state highway system at the location specified in the permit until the permittee constructs or alters the connection in accordance with the permit requirements.

(2) The cost of construction or alteration of a connection shall be borne by the permittee, except for alterations which are not required by law or administrative rule, but are made at the request of and for the convenience of the permitting authority. The permittee, however, shall bear the cost of alteration of any connection which is required by the permitting authority due to increased or altered traffic flows generated by changes in the permittee's facilities or nature of business conducted at the location specified in the permit.

(3) Except as otherwise provided in this chapter, an unpermitted connection is subject to closure by the appropriate permitting authority which shall have the right to install barriers across or remove the connection. When the permitting authority determines that a connection is unpermitted and subject to closure, it shall provide reasonable notice of its impending action to the owner of property served by the connection. The permitting authority's procedures for providing notice and preventing the operation of unpermitted connections shall be adopted by rule.

[1991 c 202 § 4.]

WAC 468-51-030

General provisions.

(1) When connection permits required. Every owner of property which abuts a state highway, or has a legal easement to the state highway, where limited access rights have not been acquired has a right to reasonable access, but may not have the right to a particular means of access, to the state highway system. The right of access to the state highway may be restricted if, in compliance with local regulation, reasonable access to the state highway can be provided by way of another public road which abuts the property. These public roads shall be of sufficient width and strength to reasonably handle the traffic type and volumes that would be accessing that road. All new connections including alterations and improvements to existing connections to state highways shall require a connection permit. Such permits, if allowed, shall be issued only after written development approval where such approval is required, unless other interagency coordination procedures are in effect. However, the department can provide a letter of intent to issue a connection permit if that is a requirement of the agency that is responsible for development approval. The alteration or closure of any existing access connection caused by changes to the character, intensity of development, or use of the property served by the connection or the construction of any new access connection shall not begin before a connection permit is obtained from the department. Use of a new connection at the location specified in the permit is not authorized until the permit holder constructs or modifies the connection in accordance with the permit requirements. If a property owner or permit holder who has a valid connection permit wishes to change the character, use, or intensity of the property or development served by the connection, the department must be contacted to determine whether a new connection permit would be required.

(2) Responsibility for other approvals. Connection permits authorize construction improvements to be built by the permit holder on department right of way. It is the responsibility of the applicant or permit holder to obtain any other local permits or other agency approvals that may be required, including satisfaction of all environmental regulations. It is also the responsibility of the applicant to acquire any property rights necessary to provide continuity from the applicant's property to the state highway right of way if the applicant's property does not abut the right of way, except where the connection replaces an existing access as a result of department relocation activity.

(3) Early consultation. In order to expedite the overall permit review process, the applicant is strongly encouraged to consult with the department prior to and during the local government subdivision, rezoning, site plan, or any other applicable predevelopment review process for which a connection permit will be required. The purpose of the consultation shall be to determine the permit category and to obtain a conceptual review of the development site plan and proposed access connections to the state highway system with respect to department connection location, quantity, spacing, and design standards. Such consultation will assist the developer in minimizing problems and delays during the permit application process and could eliminate the need for costly changes to site plans when unpermittable connection proposals are identified early in the planning phase. The conceptual review process is further detailed in WAC 468-51-050.

(4) Cost of construction.

(a) Permit holder. The cost of construction or modification of a connection shall be the responsibility of the permit holder, including the cost of modification of any connection required as a result of changes in property site use in accordance with WAC 468-51-110. However, the

permit holder is not responsible for alterations made at the request of the department that are not required by law or administrative rule.

(b) Department. Existing permitted connections impacted by the department's work program and which, in the consideration of the department, necessitate modification, relocation, or replacement in order to meet current department connection location, quantity, spacing, and design standards, shall be modified, relocated, or replaced in kind by the department at no cost to the permit holder. The cost of further enhancements or modification to the altered, relocated, or replaced connections requested by the permit holder shall be the responsibility of the permit holder.

(5) Notification. The department shall notify affected property owners, permit holders, business owners and/or emergency services, in writing, where appropriate, whenever the department's work program requires the modification, relocation, or replacement of their access connections. In addition to written notification, the department shall facilitate, where appropriate, a public process which may include, but is not limited to, public notices, meetings or hearings, and/or individual meetings. The department shall provide the interested parties with the standards and principles of access management.

(6) Department responsibility. The department has the responsibility to issue permits and authority to approve, disapprove, and revoke such permits, and to close connections, with cause.

[Statutory Authority: Chapter 47.50 RCW. WSR 99-06-034 (Order 187), § 468-51-030, filed 2/25/99, effective 3/28/99. Statutory Authority: RCW 47.01.101 and chapter 47.50 RCW. WSR 92-14-044, § 468-51-030, filed 6/24/92, effective 7/25/92.]

WAC 468-51-130

Closure of unpermitted connections.

Closure criteria, permit requirements. Any unpermitted connections to the state highway system which were in existence and in active use consistent with the type of connection on July 1, 1990, shall not require the issuance of a permit and may continue to provide connection to the state highway system, unless the property owner had received written notification initiating connection closure from the department prior to July 1, 1990, or unless the department determines that the unpermitted connection does not meet minimum acceptable standards of highway safety and mobility based on accident and/or traffic data or accepted traffic engineering criteria, a copy of which must be provided to the property owner and/or permit holder and tenant upon written request. The department may require that a permit be obtained if a significant change occurs in the use, design, or traffic flow of the connection or of the state highway. If a permit is not obtained, the department may initiate action to close the unpermitted connection point in compliance with RCW 47.50.040. Any unpermitted connection opened subsequent to July 1, 1990, is subject to closure by the department. The process to be followed by the department in the closure of an unpermitted connection shall be consistent with chapter 34.05 RCW and rules adopted thereunder. The notification process is as follows:

(1) Notification. The department shall serve notice, in accordance with rules adopted in compliance with chapter 34.05 RCW, upon the property owner of a connection to a state highway which is found by the department to be unpermitted. This notice shall clearly describe the highway connection violation and shall establish a thirty-day time limit for either applying for a connection permit or requesting an adjudicative proceeding in compliance with chapter 34.05 RCW. The notice will further advise the property owner that failure to act in either of the prescribed ways within the time period will result in department closure of the unpermitted connection.

(2) Permit application. If a permit application is filed within the thirty days, and the application is denied, the department shall notify the property owner of the denial. The property owner may then proceed with the permit application revision process set forth in WAC 468-51-080 or request an adjudicative proceeding in compliance with WAC 468-51-150 within thirty days. Failure to act in either of those prescribed ways within the time period set forth in the rules will result in department closure of the unpermitted connection. If the location and design of the connection in the permit application are acceptable to the department, the existing connection may continue to be used for a specified period of time or until the connection specified in the permit application is constructed.

(3) Approval conditions. Modifications, relocation, or closure of unpermitted connections may be required by the department as a requirement of permit approval, subject to the adjudicative proceedings provisions of WAC 468-51-150.

[Statutory Authority: Chapter 47.50 RCW. WSR 99-06-034 (Order 187), § 468-51-130, filed 2/25/99, effective 3/28/99. Statutory Authority: RCW 47.01.101 and chapter 47.50 RCW. WSR 92-14-044, § 468-51-130, filed 6/24/92, effective 7/25/92.]