

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

MICHAEL COHOON and JANICE PROUST,

Plaintiffs-Respondents,

and

GARY WILLIAMS and RAELENE WILLIAMS, husband and wife,

Intervenor Plaintiffs-Respondents,

vs.

JOHN B. CUNY and SHERL CUNY,
husband and wife and their marital community,

Defendants-Appellants.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
DEPT. OF
BY _____

OPENING BRIEF OF APPELLANTS CUNY

**Craig A. Ritchie, WSBA#4818
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I. INTRODUCTION

Appellants (defendants below) John Cuny and Sherl Ouren own a home on a platted lot in one of two adjacent four-parcel shortplats with two parallel 30 foot easements. Appellants sought to widen the road on the easement and to have the court declare one 60 foot easement. The trial court enjoined their use of most of their platted 30 foot easement and denied all other relief.

II. STATEMENT OF THE CASE

This case came on for trial on March 10-12, 2008. The plaintiffs had essentially requested a permanent injunction and quiet title action and a declaratory judgment. CP 107, CP 82. The issues involved two adjacent four-lot subdivisions representing eight different ownership interests. One owner of each of several shortplats was represented by the two plaintiffs, and the defendants represented one owner of one lot in one shortplat. Clallam County was not a party. The other lot owners in the two plats were not parties. The case sought to resolve the issue of the width of an entrance road leading into both plats and essentially straddling the

boundary line between the two shortplats. At the time of the platting, Clallam County Ordinance No. 292 (Appendix B, attached hereto) required a 60 foot right-of-way. (Trial Exhibit 52). This ordinance was amended by Ordinance 57 (Trial Exhibit 51). The differences were 17 feet of surface from the centerline on each side, 4 feet of drainage beyond the 17 feet on each side, and 9 feet for utilities on each side. It should be noted that Ordinance 292 does *not* deal with a total surface of 17 feet and drainage of 4 feet and utilities of 9 feet, but each of those measurements are from the *centerline*. See page 38 of Ordinance 292 (Appendix B).

The plat borders a private airstrip. Houses on the side bordering the air strip have garages or hangars holding various aircraft. See Exhibit 1. There are no fire hydrants in either shortplat and the nearest fire hydrant is approximately three miles away. RP Day 3, p. 28, l. 15. The fire district serving the property is a combination volunteer and staffed fire department. RP Day 3, p. 27, l. 18.

The plaintiffs' complaint alleges that the defendants on occasion went off the paved 20 foot surface road onto the easement portion. Plaintiffs sought to prohibit any use of the easement. Plaintiffs sought to prohibit any determination by the court that a 60 foot easement existed

serving both plats. Defendants sought to declare that a 60 foot easement existed and that defendants in any event could utilize the full 30 foot easement. CP 75, CP 69.

The court found that the defendants could not use either the 60 foot right-of-way or the 30 foot right-of-way easement. CP 16. The court found that it was not necessary for the County to be a party, nor was it necessary for other property owners in either plat to be parties. The court found in its Memorandum Opinion that the parties *and their predecessors* had agreed to bind themselves to a 20 foot wide roadway, but at the same time found that the defendants did not intend “to totally abandon [their] rights to the platted easement.” The court found that the defendants were required to establish a basis for use of the full easement width and a need for that use, not just a desire for the use. The court found that the doctrine of equitable estoppel had been proven, which barred the defendants from utilizing their easement to its full width. At the same time, the court found that the defendants *were* entitled to use a portion of the adjoining plat (ten feet), but that there was no right to any further expansion. The court finally found that the defendants “shall be enjoined from expanding the use of the roadway as it currently exists on both [plaintiffs’] properties.”

III. ASSIGNMENTS OF ERROR

1. The trial court erred in determining that the County of Clallam was not an indispensable party to the litigation. Conclusion of Law 5.¹
2. The trial court erred in determining that fewer than all of the owners of property in the plats were not indispensable parties to the litigation. Conclusion of Law 6.
3. The trial court erred in determining that the defendants had a burden of proving that their desired use of their platted right-of-way was “necessary.” Finding of Fact Nos. 21, 22, 23, 24 and 26.
4. The trial court erred in finding that the parties and their predecessors had a binding agreement to a 20 foot roadway straddling the two shortplats, and had agreed to abandon the platted 60 foot right-of-way or 30 foot right-of-way. Findings of Fact Nos. 9, 10, 11, 12, 14, 19 and 25.
5. The trial court erred in not finding that a 60 foot right-of-way existed for both plats. Finding of Fact No. 14.

¹ All findings and conclusions are set forth in Appendix A, attached.

6. The trial court erred in determining that equitable estoppel was proven. Finding of Fact Nos. 20 and 25.
7. The trial court erred in finding that defendants' proposed use of their 30 foot easement was not a reasonable use. Finding of Fact No. 26.
8. The trial court erred in finding that County platting law at the time required only a 30 foot easement. Finding of Fact No. 14.
9. The trial court erred in determining that the evidence established that the shortplats were "vested" when filed rather than when determined complete. See Abbey Road Group LLC v. City of Bonney Lake, 141 Wn App 184, 167 P3d 1213. Finding of Fact No. 14.
10. The trial court improperly issued an injunction.

IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Where a platted easement for ingress and egress is changed or reduced by a court decision, must the County approving the plat be a party to the litigation?

Where a platted easement for ingress and egress is changed or reduced by a court decision, must all owners in the plat be parties to the litigation?

Is a plat “amended” if the use of platted right-of-ways is reduced or limited?

Does the State of Washington follow the California case of Scrubby v. Vintage Grapevine, Inc., 37 Cal App 4th, 697 (1995)?

Do owners of platted right-of-ways in a plat need to prove necessity in order to utilize their full platted right-of-way?

Where fewer than all of the owners in a plat participate in any agreement, is there a binding agreement on plat owners?

Where some owners agree to pay for the construction of a paved portion of roadway without any statement that they intend to limit their right-of-way, and where such agreement is not acknowledged by the parties, are the parties prohibited from utilizing the full width of their respective right-of-ways?

Is the evidence in this case sufficient to escape the statute of frauds?

Where the evidence is that County regulations required a 60 foot

right-of-way at the time of the platting of the two plats, and where the plats were platted by the same developer on the same day at the same time, and based on the evidence in the case, does a common 60 foot right-of-way for the two plats exist?

Are the elements of equitable estoppel established by the facts presented in this case?

Is it reasonable for the owner of a non-exclusive easement for ingress and egress for road uses in a plat seek to utilize the full easement width for road purposes?

Does the evidence support an abandonment of a platted easement?

Does the owner of a platted easement have a burden of proving that their desired use of a platted right-of-way is “necessary”?

V. ARGUMENT

The County is a Necessary Party

The trial court determined that the flaw in the defendants’ argument that the County was a required party was in arguing that the plaintiffs’ claim amends the shortplat. See Exhibit 1 (aerial view). However, the court’s decision clearly does amend the shortplat. The

platted roads have now been amended. Yet one of the basic requirements for shortplat approval was a finding by the county that the roads adequately serve the plat. The court has in fact amended that determination to find that smaller roads will adequately serve the plat, thus directly contradicting and reversing the County's decision. This issue was directly addressed in a case cited to the court. See Exhibit 6 and Exhibit 4.

The case of MKKI, Inc. v. Krueger, 135 Wn App 647, 145 P3d 411 (2006), *rev. den.* 161 Wn 2d 1012 (2007), held that even quit claim deeds by property owners could not void easements set forth in a shortplat. A portion of the opinion states, "Because the easements in the shortplat could be amended only by following the county code, we hold that the quit claim deeds were void, and that the easements were conveyed to MKKI Inc. We affirm the trial court's grant of summary judgment in favor of MKKI Inc. and Yakima County." Clearly Yakima County in that case was a necessary party, and just as clearly, the easements could not be amended without following the county shortplating procedure.

Evidence Does Not Support Abandonment of a Platted Easement

First, as shown above, a platted easement cannot be altered by the owners of the plat without going through county replatting procedures, and

not without naming the county in any litigation.

The law in Washington is further clear that easements are interests in land and therefore must be conveyed by a deed complying with the statute of frauds. This is set forth in Gold Creek North Limited Partnership v. Gold Creek Umbrella Association, 177 P3d 201, decided February 20, 2008 by Division II in Case No. 35301-6-II. In that case, the court stated the above, adding a reference to RCW 64.04.010 as the statute of frauds and citing Berg v. Ting, 125 Wn 2d 544, 551, 886 P2d 564 (1995), and stating,

A grantor must intend to convey an easement. MKKI, Inc. v. Krueger, [cite]. “We construe the party’s intent from the language in the instrument purporting to grant the easement.” Schwab v. City of Seattle, 64 Wn App 742, 751, 826 P2d 1089 (1992).

The same principle must apply to vacating an easement or amending an easement. In Zunio v. Rajewski, 140 Wn App 215, 165 P3d 57 (2007), the court stated in its opening paragraph,

This case addresses the fundamental issue of what is necessary to create an easement. We hold that the documents here designated as “private road and utility easements” simply do not create easements because they lack the required statement of intent to transfer

property. We affirm the trial court

See also McPhadden v. Scott, 95 Wn App 431, 975 P2d 1033 (1999).

Thus, the documents created by some of the owners of the lots in the subdivision clearly and unmistakably do not even mention abandonment of the existing platted easement and in fact directly represent the existing platted easements. The documents simply lack the required elements to establish a changed easement. Perhaps more importantly, they do not contain any agreement by all of the landowners in the plat, and fewer than all of the owners cannot make such an agreement to affect the plat.

The Owner of a Platted Easement Does Not Have a Burden of Proving that a Desired Road Use is “Necessary”

There is *no* Washington case law even hinting that such a requirement exists. In fact, the contrary is expressed in all of the Washington cases. See for instance Beebe et al. v. Swerda et al., 793 P2d 442, 58 Wn App 375. See also Rupert v. Gunter, 31 Wn App 27, 640 P2d 36 (1982); Seaman v. Beckwith, 2007 Washington Court of Appeals 56560-5 decided July 9, 2007, 163 Wn 2d 1039, *rev. den.*; McPherson Bros. Co. v. Buell, 167 Wn 391, 9 P2d 348 (1932); Heg v. Alldredge, 157 Wn 2d 154, 137 P3d 9 (2006); and Cole v. Laverty, 112 Wn App 180, 49

P3d 924 (2002).

**The County Required a 60' Road
at the Time the Two Adjacent Plats Were Filed**

It is respectfully submitted that even the evidence cited by the trial court shows that a wider easement than 30 feet was required. The trial court read the document and failed to recognize that the distances which total 30 feet were to be measured *on each side* from the centerline of the road, thus making the road 60 feet. See Ordinance 292, Exhibit 52. Thus, the intent of the platters which was expressed by a witness at trial was supported by the county's own documentation, and a joint 60 foot right-of-way does exist for both plats. RP Day 2, p. 189-208.

**The Doctrine of Equitable Estoppel or
Part Performance Does Not Apply in this Case**

The court found that the fact that the parties landscaped their property where a road right-of-way easement existed estopped the defendants from utilizing the platted easement. Nothing could be further from the law in the state of Washington. Case after case, mostly cited by the plaintiff, show that the most obstructive semi-permanent use of a platted right-of-way or easement does not affect the right of the easement owner to utilize the easement. Most of those cases involved the doctrine

of adverse possession, and the courts have uniformly held that the easement owner has just as much a right not to use the easement as to use the easement. The fact that a fence, locked gates, two bathtubs used as planters, etc. are on an easement does not create adverse possession because “the servient estate owner has the right to use his or her land for any purpose that does not interfere with enjoyment of the easement.” See Coley v. Lavery, 112 Wn App 180, 184, 49 P3d 924 (2002). See also Heg v. Alldredge, *supra*.

VI. CONCLUSION

For the above reasons, it is respectfully submitted that the trial court should reverse its decision and enter findings and conclusions and a decision consistent with the above argument that:

- 1) The court was without jurisdiction to adjudicate the case because the lack of all of the subdivision owners as parties;
- 2) The court was without jurisdiction to change the easements in the plat because of the failure of the plaintiffs to comply with subdivision and platting requirements or to join Clallam County;

- 3) Plaintiffs did not prove that their plats were vested as of the date of filing;
- 4) The two plats recorded on the same day, at a time when the minimum road width requirements for such plats were 60 feet, were intended to have a common 60 foot roadway.
- 5) The plaintiffs failed in their burden of proof to establish any intent to abandon the platted easement.
- 6) The plaintiffs failed in their burden of proof to establish an amendment to the subdivision or an amendment to the platted easement.
- 7) The plaintiffs proffered proof violates the statute of frauds.
- 8) The plaintiffs failed in their burden of proof to establish any intent of Defendants Cuny to abandon their platted right-of-way.
- 9) The plaintiffs failed in their burden of proof to establish equitable estoppel because plaintiffs had a right to use all of the right of way up until the defendants wished to exercise their right to use it as a road, and further because there was no evidence that the Cunys every said or implied th at they

would not exercise their right to use the platted road.

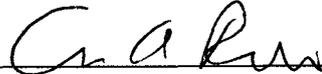
- 10) The law in Washington differs from the law in California. In Washington, it is not necessary to prove a "need" in order to exercise the right to utilize a road easement for road purposes.

VII. RELIEF REQUESTED

The granting of an injunction against appellants should be reversed. The right of the appellants to use the platted 30 foot easement for road purposes should be declared. The existence of a combined 60 foot joint easement should be declared. In the alternative, the case should be remanded and the plaintiffs' claims dismissed for failure to join indispensable parties: Clallam County and all owners in both shortplats.

RESPECTFULLY SUBMITTED this 18th day of
November, 2008.

RITCHIE LAW FIRM, P.S.


CRAIG A. RITCHIE, WSBA #4818
Attorney for Appellants Cuny

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SUPERIOR COURT OF WASHINGTON FOR CLALLAM COUNTY

MICHAEL COHOON and JANICE PROUST,

Plaintiffs,

and

GARY WILLIAMS and RAELENE WILLIAMS, husband and wife,

Intervenor Plaintiffs,

vs.

JOHN B. CUNY and SHERL CUNY, husband and wife and their marital community,

Defendant.

NO. 07-2-00484-2

FINDINGS OF FACT, CONCLUSIONS OF LAW, PERMANENT INJUNCTION, ORDER AND JUDGMENT

(Clerk's Action Required)

JUDGMENT SUMMARY

Judgment Creditors:	Michael Cohoon and Janice Proust, husband and wife Gary Williams and Raelene Williams, husband and wife
Judgment Debtors:	John B. Cuny, a single person
Judgment for Costs Awarded to Plaintiffs:	\$ 455.00
Judgement for Costs Awarded to Intervenor Plaintiffs:	<u>\$ 200.00</u>
Attorney for Plaintiffs:	David H. Neupert
Attorney for Intervenor Plaintiffs:	Malcolm S. Harris

FINDINGS OF FACT, CONCLUSIONS OF LAW, PERMANENT INJUNCTION, ORDER AND JUDGMENT - 1

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APPENDIX A

1 Attorney for Defendant: Craig A. Ritchie

2 Judgment for Costs awarded shall bear interest at 12% per year.

3 Attorney's fees and costs shall bear interest at 12% per year.
4

5 **ORDER**

6 This matter having come on for trial before the undersigned judge of the
7 above-entitled Court on March 10-12, 2008; the Court having heard testimony of
8 witnesses and argument of counsel; now makes the following:

9 **FINDINGS OF FACT**

10 1. Plaintiffs Michael Cohoon and Janice Proust, husband and wife, form a
11 marital community under the laws of the State of Washington.

12 2. Plaintiffs own real property located in Clallam County, Washington,
13 described as:

14 LOT 3 OF SHORT PLAT RECORDED IN VOLUME 17
15 OF SHORT PLATS, PAGE 35, UNDER CLALLAM
16 COUNTY RECORDING NO. 586423, BEING A SHORT
17 PLAT OF PARCEL 30 OF REVISED BLUE RIBBON
18 FARMS SURVEY DIVISION NO. 2, AS RECORDED IN
19 VOLUME 8 OF SURVEYS, PAGE 94, BEING A
20 PORTION OF SECTION 33, TOWNSHIP 31 NORTH,
21 RANGE 4 EAST, W.M.

22 3. Intervenor Plaintiffs Gary Williams and Raelene Williams are husband and
23 wife and form a marital community under the laws of the State of Washington.

24 4. Intervenor Plaintiffs own real property located in Clallam County, legally
25 described as:

26 LOT 1 OF SHORT PLAT RECORDED IN VOLUME 17
27 OF SHORT PLATS, PAGE 35, UNDER CLALLAM
COUNTY RECORDING NO. 586423, BEING A SHORT
PLAT OF PARCEL 30 OF REVISED BLUE RIBBON

FINDINGS OF FACT, CONCLUSIONS OF LAW,
PERMANENT INJUNCTION, ORDER AND JUDGMENT - 2

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FARMS SURVEY DIVISION NO. 2, AS RECORDED IN VOLUME 8 OF SURVEYS, PAGE 94, BEING A PORTION OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 4 EAST, W.M.

5. Defendants John B. Cuny and Sheryl Cuny (also known as Sheryl Ouren), who are not married, either collectively or individually own real property located in Clallam County, Washington, legally described as:

LOT 1 OF SHORT PLAT RECORDED IN VOLUME 17 OF SHORT PLATS, PAGE 35, UNDER CLALLAM COUNTY RECORDING NO. 586423, BEING A SHORT PLAT OF PARCEL 30 OF REVISED BLUE RIBBON FARMS SURVEY DIVISION NO. 2, AS RECORDED IN VOLUME 8 OF SURVEYS, PAGE 94, BEING A PORTION OF SECTION 33, TOWNSHIP 31 NORTH, RANGE 4 EAST, W.M.

6. Plaintiffs' property and Defendants' property are located in the Aleinikoff Short Plat recorded December 31, 1986, under Clallam County Auditor File No. 556423.

7. Intervenor Plaintiffs' property is located in the Rindler Short Plat, recorded December 31, 1986 under Clallam County Auditor File No. 556421.

8. The Aleinkoff Short Plat and Rindler Short Plat each contain four lots. The plats are adjacent to one another. The south boundary of each plat lies along Greywolf Road. The dedication for each short plat contains a thirty foot easement for ingress, egress and utilities. The two easements are adjacent to and parallel with each other, along the common boundary of the two plats. The easements are perpendicular to Greywolf Road.

DHW
[Handwritten signature]

9. In 1998, ~~the~~ lot owners in both plats, including the Defendants, recognized that it was not necessary or desirable to have two parallel thirty foot easements and agreed to establish a single easement for ingress, egress and utilities, centered along the common boundary of the two plats.

1 16. In 2006, Defendants threatened to remove Plaintiff's landscaping, and also
2 drove motor vehicles outside of the existing paved surface and thereby damaged Plaintiffs'
3 landscaping.

4 17. The Court issued a preliminary injunction on June 1, 2007 under the above
5 cause number.

6 18. By agreement of all parties, the trial court viewed the subject property on
7 the first day of trial. The view assisted the Court in understanding the trial testimony and
8 exhibits. An aerial view of the subject property was admitted as Trial Exhibit 1. That
9 exhibit shows Greywolf Road in the foreground and the Plaintiffs' property located to the
10 left and west of the common driveway from Greywolf Road, and the Intervenor Plaintiffs'
11 property to the right and east of the common road from Greywolf Road. The road from
12 Greywolf intersects in a "T" at the back of the Plaintiffs' and Intervenor Plaintiffs'
13 properties. Defendants' property is located at the far left and north of the Plaintiffs'
14 property. The access drive shown on the north portion of Plaintiffs' property has been the
15 sole means of access to the Defendants' property since ^{it was constructed} Defendants' purchased it in 1996.

16 19. Defendants agreed on the location of the combined access route from
17 Greywolf Road and also agreed to locate a fifteen foot driveway to serve the Defendants'
18 property which intersected with the twenty foot asphalt surface to Greywolf Road.

19 20. The Plaintiffs, ^{and} Intervenor Plaintiffs, ~~and their predecessors~~, installed
20 landscaping and made other improvements to their property in reliance to the Defendants'
21 actions in agreeing to location of the driveways.

22 21. Defendants alleged, but did not prove, that they were entitled to use the
23 entire width of each thirty foot easement in both short plats.
24

1 22. There are four lot owners within each of the two short plats. Each lot
2 owner has private ownership of the roadways described in the respective short plats.
3 Clallam County Ordinance 292 provides that authority over the roadway is vested not in
4 the individual lot owners, but in a "lot owners association or other designated responsible
5 entity".

6 23. Defendant testified that it was necessary for him to expand the easement
7 beyond that which he agreed to in order to provide adequate access for fire protection and
8 emergency vehicles.

9 24. The parties' properties are located within Fire District 3 of Clallam County,
10 Washington. Assistant Fire Chief Roger Moeder testified that the existing access from
11 Greywolf Road to the Defendants' property was more than adequate for fire protection and
12 emergency access. Assistant Chief Moeder testified that he wished that every short plat in
13 the district had access as good as that enjoyed by the Defendants. Defendants did not give
14 any other reason to expand use of the easements.

15 25. Based on the lot owners' agreement on the location of the common access
16 and Defendant Cuny's agreement to a fifteen foot wide access on the north side of the
17 Plaintiffs' property, it was reasonable for the Plaintiffs, Intervenor Plaintiffs, and their
18 predecessors, to install landscaping and other valuable improvements on their property.
19

20 26. Defendants have provided no reason to expand their use of the easement on
21 Plaintiffs' property beyond the existing improvements as shown in Exhibit 1. Defendants
22 have no easement rights in the Rindler short plat, and have no right to expand the existing
23 paved surface further into any portion of the Rindler short plat.
24
25

1 **CONCLUSIONS OF LAW**

2 Based upon the foregoing Findings of Fact, the Court makes the following

3 Conclusions of Law:

4 1. The Court has jurisdiction over the parties and the subject matter of this
5 case.

6 2. Venue is proper in Clallam County, Washington.

7 3. Defendants entered into a binding and enforceable agreement setting forth
8 the design and location of the access roadways within the Aleinikoff and Rindler short
9 plats. There was a full meeting of the minds and full consideration between all parties to
10 the agreement.

11 4. The evidence clearly, cogently and convincingly proved that Defendants'
12 present claims were inconsistent with their earlier acts and statements regarding the
13 design, location and construction of the driveways and location of utilities within the plats.
14 Plaintiffs, Intervenor Plaintiffs, and their predecessors, relied on Defendants' acts and
15 statements. Plaintiffs and Intervenor Plaintiffs would be injured if Defendants were
16 allowed to contradict or repudiate their prior acts and statements. Contradiction or
17 repudiation may only be allowed upon prior proof of reasonable necessity to the Court by
18 Defendants.

19 5. Clallam County, Washington, is not an indispensable party to this action.
20 The platted easements within the two short plats are not being modified or amended as the
21 agreement the lot owners made provides only for the design and location of their driveway
22 and utilities within the easements. Enforcement of the property owners' agreement against
23 the Defendants does not require involvement of Clallam County.
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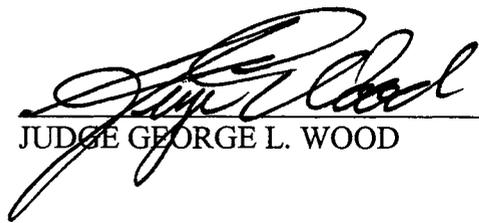
2. Plaintiffs are awarded their costs against the Defendants, jointly and severally, in the amount of \$ 455.00.

3. Intervenor Plaintiffs are awarded their costs against the Defendants, jointly and severally, in the amount of \$ 200.00.

4. Said judgment shall bear interest at 12% per year.

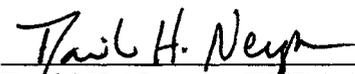
5. All cash or other security posted with the court under the above cause number is exonerated, and the Clerk shall return the same to the posting party.

DATED this 13 day of June, 2008.



JUDGE GEORGE L. WOOD

Presented by:
PLATT IRWIN LAW FIRM



David H. Neupert, WSBA #16823
Of Attorneys for Plaintiffs

HARRIS MERICLE & WAKAYAMA, PLLC

Malcolm S. Harris, WSBA No. 4710
Of Attorneys for Intervenor Plaintiffs

Copy received; approved for entry
as to form:
RITCHIE LAW FIRM, P.S.

Craig A. Richie, WSBA No. 4818
Of Attorneys for Defendants



*Repealed by
Initiative 1, 1987*

ORDINANCE NO. 292, 1986

Be it ordained by the Board of Clallam County Commissioners:

CHAPTER 29

CLALLAM COUNTY LAND DIVISION ORDINANCE

APPENDIX B

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PRIVATE STREET RIGHT OF WAY ALLOCATION

Street right-of-way usage allocation minimum standards measured from the right-of-way centerline in the order specified:

RIGHT OF WAY WIDTH	IMPROVEMENT	ALLOCATION
60 feet	surface	17 feet
	drainage	4 feet
	utilities	9 feet

The private street right-of-way minimum widths shown above may be increased if the subject street could serve neighboring undeveloped property. Such increase shall take into consideration the future use of the street based on the zoned densities for the area and any physical constraints which may prevent development to densities allowed by the County Zoning Code Chapter 33. Rights-of-way can be reduced in size by the amount equal to the utilities area minimum requirement if utilities serving the division currently exist outside of the proposed street right-of-way or if adequate permanent utility easements are reserved in another location.

10. Existing streets: Whenever existing public streets exist adjacent to or within a division which have rights of way of less than 60 feet in width, the divider shall provide the additional right of

way to attain County street standards. For public streets existing adjacent to a division the divider shall provide additional right-of-way to obtain one half of the road right-of-way width standard as measured from the centerline of the subject public street or the section subdivisional line at the discretion of the Department of Public Works. When topographical problems require additional right of way as determined by the County Department of Public Works, it shall be provided by the applicant.

11. Street intersection site distance - Intersections of division streets with County streets shall be located and designed to provide maximum sight distance consistent with standards of the Washington State Department of Transportation Design Manual.
12. Half Streets-Where a street is to be located adjacent to the boundary of a proposed division and no street exists on neighboring property immediately adjacent to the street, the street right-of-way above may be reduced to not less than 30 feet in width with a street surface of not less than 17 feet in width. If this chapter requires such boundary streets to be constructed in the division, the owner of the division site shall dedicate a one foot access protection strip of land to the County and access over such strip from abutting off-site unplatted land shall be prohibited until such time as it is divided pursuant to the provisions of this chapter.
13. Street Name Sign - Street name signs shall be placed at all street intersections within or abutting the division. Sign type and

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

MICHAEL COHOON and JANICE PROUST,

Plaintiffs-Respondents,

and

GARY WILLIAMS and RAELENE WILLIAMS, husband and wife,

Intervenor Plaintiffs-Respondents,

vs.

JOHN B. CUNY and SHERL CUNY,
husband and wife and their marital community,

Defendants-Appellants.

FILED
COURT OF APPEALS
DIVISION II
08 NOV 19 AM 11:44
STATE OF WASHINGTON
BY [Signature] DREY

PROOF OF SERVICE

The undersigned states and declares as follows:

1. I am over the age of 18, am competent to testify, am an employee of Ritchie Law Firm, P.S., and make this declaration of my personal knowledge and belief.

2. I served a copy of the OPENING BRIEF OF APPELLANTS CUNY upon the following individuals, by sealing each copy in an envelope, with first class postage fully prepaid thereon, and causing the envelope to be placed in the U.S. Mail, addressed, respectively, as follows:

David Neupert
Platt Irwin Taylor et al
403 S. Peabody
Port Angeles WA 98362

Malcolm Harris
Harris Mericle & Wakayama, PLLC
999 Third Avenue, Suite 3210
Seattle WA 98104

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

DATED this 18th day of Nov., 2008, at Sequim, Clallam County,
Washington.



ERIKA HAMERQUIST
Secretary