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I. INTRODUCTION

Appellant Wiseman Utilities, Inc. filed invalid Claims of Lien against individual homeowner properties belonging to the officers and directors of Paradise Service Associates, Inc. PSA Inc owns a water distribution system that serves residents of Paradise Shore Estates, a residential development along Mason Lake in Grapeview, Washington. PSA Inc. contracted with Wiseman Utilities to replace the water distribution system. A dispute arose regarding final payment under the contract, which resulted in Wiseman's filing its claims of lien. However, Wiseman invalidly filed its liens against the officers' and directors' properties, rather than against property owned by PSA Inc.

The individual homeowners sought to have the liens released under the frivolous lien statute, RCW 60.04.081, because the liens were both (1) frivolous and made without reasonable cause; and, (2) clearly excessive. The frivolous lien statute provides an expedited procedure for releasing property from lien claims that are either frivolous or clearly excessive. The trial court released the liens, finding them invalid, but not frivolous. Initially, the court did not rule on whether the liens were clearly excessive. On the individual homeowners' motion to reconsider, the trial court found the liens clearly excessive and entered a modified order on June 15, 2010. Wiseman appeals from the May 18, 2010 and June 15, 2010 orders.

The gravamen of Wiseman's appeal appears to be the clearly excessive finding, i.e., the propriety of its individual liens filed against the officers and directors' properties in the full amount Wiseman Utilities claims is due under its contract with PSA Inc. The officers and directors' individual property is a subset of properties served by PSA Inc.'s water distribution system. Wiseman also claims that PSA Inc. was not the owner as identified in the contract between Wiseman and PSA Inc., but rather was a statutory "construction agent" of the individual property owners in Paradise Shore Estates. Wiseman argues its claims of lien were valid and should not have been released.

The respondent individual homeowners ask this court to affirm the trial court's finding that the liens were invalid and clearly excessive. The trial court correctly determined that (1) PSA Inc. was not a construction agent under the PSA Inc.-Wiseman Utilities contract; (2) Wiseman filed invalid claims of lien that were properly released; and, (3) Wiseman's claims of lien were clearly excessive under RCW 60.04.081. Respondents contend that Wiseman filed its claims of lien against the officers and directors' properties frivolously and without reasonable cause. Respondents also ask this court to award their attorney fees and costs on appeal under RCW 60.04.081(4) and RAP 18.1(a).

II. COUNTERSTATEMENT OF THE CASE

A. Factual Background.

Respondents (plaintiffs below) were the officers and directors of PSA Inc. for the 2009-2010 term. CP 245-46, 254-71. Paradise Service Associates, Inc. is a Washington Nonprofit Corporation, organized under Ch. 24.03 RCW. Its Articles of Incorporation were filed with the Secretary of State in January 1992. CP 195. PSA Inc.'s primary purpose is to provide a water distribution system and water to its members, the owners of lots in Paradise Shore Estates. PSA Inc. owns the water system. CP 197. PSA Inc. may enter into contracts and incur liabilities and obligations in connection with providing the water distribution system. CP 201. PSA Inc. may act only through its officers and directors. CP 196. As with any corporation, PSA Inc.'s liabilities and obligations are not the obligations of its members. "The private property of the members of this corporation shall not be liable for the debts of the corporation."¹ CP 203; RCW 4.24.264 ("[A] member of the board of directors or an officer of any nonprofit corporation is not individually liable for any discretionary decision or failure to make a discretionary decision within his or her official capacity as director or officer unless the

¹ Wiseman asserts that PSA Inc.'s Articles of Incorporation provide the members of the water system "can be personally liable by virtue of the membership interest." Appellant's Opening Brief, p. 1. This is incorrect.

decision or failure to decide constitutes gross negligence”). No individual member of the association (i) owns the water distribution system; (ii) has the right to control PSA Inc.; or, (iii) may be liable for its debts or obligations.

On January 26, 2009, PSA Inc. entered into a contract with Wiseman Utilities, Inc. to replace and upgrade the Paradise Shore Estates water distribution system. CP 379-87. The contract identifies the Owner as PSA Inc. and the Contractor as Wiseman Utilities, Inc.² CP 379. Two officers of PSA Inc., in their official capacity, signed the contract for the Owner; Kevin Wiseman signed for the Contractor. CP 385. The contract also provides that “[t]he Owner shall communicate with subcontractors only through the Contractor.” CP 381. A Schedule of Values listing description of the work to be done was attached to the contract as Exhibit A. CP 387-87

Wiseman Utilities contends that no work under the contract was performed on land owned by PSA Inc.; rather, it contends that the work was done only on public rights-of-way and individually owned properties. CP 139. However, Wiseman also states that it was hired “to construct a

² Wiseman admits that PSA Inc., and not the individual property owners, owns the water distribution system. Appellants’ Opening Brief, p. 4 (“That system is owned by Paradise Service Associates . . .”).

new, replacement system” for PSA Inc. CP 310. The contract’s Schedule of Values shows that Wiseman was to “connect pumphouse to 8” hydrant line” in the system switchover. CP 386. The pumphouse is located on land owned by PSA Inc. CP 176, 346 (parcel number 22108-52-00116) & App. A-1. The new water system serves the community park, also owned by PSA Inc. CP 176, 346 (parcel number 22108-52-00900) & App. A-2. Thus, Wiseman is incorrect in stating that it made no improvements to land owned by PSA Inc.

Wiseman Utilities says October 16, 2009 was the last date it performed work under the contract. CP 396. Wiseman Utilities sent its final bill for work under the contract to PSA Inc., showing a balance due of \$85,649.66. The balance included work performed under change orders. CP 319-23. The parties disputed the final amounts due and attempted to resolve the disagreement without immediate success. CP 325-30. Without notice to PSA Inc., Wiseman Utilities recorded liens against private property owned by each of PSA Inc.’s officers and members of its board of directors, citing the construction lien statute, Ch. 60.04 RCW. Appendix B.³ The liens imposed the full amount of the

³ Property owners in Paradise Shore Estates include two Robert Millers, only one of whom served on the board of directors. Wiseman Utilities initially filed its lien against the non-board member Robert Miller; it subsequently claimed a lien on the

unpaid balance that Wiseman claimed against each property, i.e., \$85,649.66. Cumulatively, the liens totaled \$1,027,795.92 (10 directors owning 12 lots). CP 389-98; CP 403-06. Although PSA Inc. owns property upon which Wiseman performed work, CP 346, Wiseman Utilities filed no claim of lien on any property owned by PSA Inc.⁴ CP 347; 389-98; 403-06. The Claim of Lien contains a caption that reads, “Wiseman Utilities, Inc. Claimant, vs. Paradise Service Associates, a/k/a Paradise Shore Estates, Debtor.” The Claim of Lien states the person indebted to the claimant is “Paradise Service Associates a/k/a Paradise Shore Estates; and its Officers and Directors, including: Merrisue Steinman, Gena Smith, Marlene Casmaer, Lori Gross, Bill Davies, Rob Koenig, Boyd Smith, George Young, Larry Pazaski, and Bob Miller.” CP 393-94. It asserts liens only against the named officers and directors’ properties. CP 394-96. Wiseman admits it filed its liens against the officers and director’s private property specifically to pressure the board to approve payment of Wiseman’s final bill. CP 22-23. Wiseman failed to

board member’s property, but without releasing the lien on the non-board member’s property. CP 247-48; CP 258-59.

⁴ Appendix B is a diagram of the lots in Paradise Shore Estates. The lots Wiseman Utilities liened are highlighted in yellow; certain land owned by PSA Inc. is highlighted in pink. CP 176.

give statutory notice under RCW 60.04.031 to the officers and directors before filing its Claim of Lien. CP 245-48, 254-71.

Upon learning that Wiseman Utilities filed a claim of lien against its officers and directors' individual properties, PSA Inc. contacted Wiseman Utilities' counsel and asked that the liens be released because they were improperly filed against the individual officers and directors' properties. Wiseman's counsel refused to release the liens, stating they provided "leverage" in Wiseman's dispute with PSA Inc. over the balance due under the contract. CP 102. PSA Inc. followed up the telephone conversation with correspondence explaining why the liens filed against individual properties were improper, but Wiseman Utilities stood on its refusal to release the liens. CP 101-107. Wiseman Utilities admits that it filed the liens specifically against the officers and directors' property because the officers and directors made the decision "to hire Wiseman, who directed Wiseman to perform work, and then not pay for the work." CP 29; Appellants' Opening Brief, p. 6. In other words, Wiseman consciously targeted and filed liens against the officers and directors' individual properties for decisions they made in their official capacity as board members of PSA Inc., rather than filing the liens against property owned by the owner of the water distribution system, PSA Inc. Wiseman chose the properties to lien based on the owners' decision-making

authority for PSA Inc., and not due to receipt of benefits from the improvements to the water system.

B. Procedural History – Challenging the Liens.

PSA Inc.'s officers and directors filed a special proceeding under RCW 60.04.081 in which they argued that the liens on their individual properties should be released as frivolous and made without reasonable cause, and as clearly excessive. CP 407-21, 300-306. RCW 60.04.081 provides:

Any owner of real property subject to a recorded claim of lien under this chapter...who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court...for an order directing the lien claimant to appear before the court...and show cause, if any he or she has, why the relief requested should not be granted.

RCW 60.04.081.

A show cause hearing was held on April 19, 2010. CP 141. At that hearing, the trial court ruled that Wiseman Utilities' claims of lien against the officers and directors' properties were invalid, but not frivolous. CP 172 ("The Court will find the liens were invalid. However, I will not find that they were frivolous because . . . I could see arguably in some cases, a homeowners association could be a . . . construction agent for lot owners, but clearly not in this case."). Having ruled the liens were invalid, the court did not address whether the liens were clearly excessive

under the statute. CP 173. The court entered an order releasing the liens on May 18, 2010. CP __ (Order Releasing Liens, App. C). At that time, the court invited the parties to submit supplemental briefing on the clearly excessive issue. CP 98-99.

The officers and directors asked the court to reconsider its May 18, 2010 order and to find Wiseman Utilities' claims of lien against the individual properties clearly excessive under RCW 60.04.081. The officers and directors asserted that (i) no authority exists for filing unallocated liens against multiple properties for the full balance Wiseman Utilities claims PSA Inc. owed it under the contract; and, (ii) no authority supports claiming liens against some but not all of the properties benefited by improvements under the contract between PSA Inc. and Wiseman Utilities. CP 108-24. In short, the officers and directors argued that Wiseman Utilities' liens were clearly excessive precisely because it knowingly claimed the full amount of the disputed contract balance against targeted individual property owners (PSA Inc.'s officers and directors) instead of against property owned by PSA Inc. In so filing, Wiseman Utilities' liens constituted bad faith.

Wiseman Utilities argued that the liens were appropriate against the officers and directors' properties because they were the individuals involved in the decision not to pay Wiseman for its work. CP 29. It

argued that a “blanket” lien was appropriate where it would be difficult to apportion the lien because the work was a single, unified project. CP 26.

The trial court found Wiseman Utilities’ liens against the officers and directors’ individual properties both invalid and clearly excessive and released the liens by order entered June 15, 2010.⁵ CP 7-12. Wiseman appeals both the May 18, 2010 and the June 15, 2010 orders releasing its liens.

III. COUNTERSTATEMENT OF THE ISSUES

1. PSA Inc. owns and operates the water distribution system that serves the homes in Paradise Shore Estates. PSA Inc. can act only through its officers and directors. No individual homeowner may direct PSA Inc.’s activities. PSA Inc. contracted with Wiseman Utilities to replace its entire water distribution system. The contract identifies PSA Inc. as the Owner and Wiseman Utilities as the Contractor. The contract provides that the Owner shall communicate with subcontractors only through the Contractor.

⁵ Wiseman suggests that the court erred in entering the June 15, 2010 order. Wiseman argues that the court ruled the liens were excessive, but not clearly excessive, yet it entered an order that concluded they were clearly excessive. Appellants’ Opening Brief, p. 6. This is a non-issue. An oral opinion has no final or binding effect unless formally incorporated into the findings of fact, conclusions of law, and judgment. State v. Head, 136 Wn.2d 619, 964 P.2d 1187 (1998).

Under these facts, did the court err in finding that PSA Inc. was not the construction agent of the homeowners in Paradise Shore Estates? **Answer:** No. RCW 60.04.011(1) defines a construction agent as “any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner, for the limited purpose of establishing the lien created by this chapter.”; Henifin Construction, LLC v. Keystone Construction, 136 Wn. App. 268, 275, 145 P.3d 402 (2007) (finding that to be a construction agent under the statute requires that a principal, impliedly the owner, must grant authority to a person to act as agent).

2. The individual property owners do not own the water distribution system. No contract exists between Wiseman Utilities and any of the owners of the properties against which it filed claims of lien. Did the trial court err in finding Wiseman Utilities’ claims of lien against the officers and directors’ individual properties invalid where Wiseman Utilities had no statutory authority to file them? **Answer:** No. RCW 60.04.051 (“The lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent the

labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien.”).

3. No authority exists allowing Wiseman Utilities to file liens against only selected properties in the development. No authority exists allowing Wiseman Utilities to claim the full amount of its claim of lien against multiple properties. Wiseman admits it filed liens only against the officers and directors’ to exert pressure on them (“leverage”) to pay the balance of the contract with PSA Inc. Under these facts, were the liens clearly excessive? **Answer:** Yes. Associated Sand & Gravel Co., Inc. v. DiPietro, 8 Wn. App. 938, 942, 509 P.2d 1020 (1973).

IV. ARGUMENT

A. Standard of Review.

The trial court’s findings in a summary proceeding under RCW 60.04.081 are reviewed for substantial evidence. Andries v. Covey, 128 Wn. App. 546, 550, 113 P.3d 483 (2005) (“The statutory procedure is in the nature of a trial by affidavit”) (internal quotation omitted); W.R.P. Lake Union Limited Partnership v. Exterior Services, Inc., 85 Wn. App. 744, 750, 934 P.2d 722 (1997) (“To the extent that the trial court’s ruling is based upon a resolution of factual disputes, we will review the ruling to determine whether the factual determinations are supported by substantial evidence, and whether the trial court has made an error of law that may be

corrected on appeal.”).⁶ A show cause hearing under RCW 60.04.081 is akin to a trial by affidavit in which the trial court weighs the evidence and resolves factual disputes. It is not analogous to a summary judgment procedure which permits no weighing of the evidence. 85 Wn. App. at 749-50.

The trial court found the following facts:

1. Paradise Service Associates, Inc., is the owner of the water distribution system that was the subject of the contract between Wiseman Utilities, Inc. and Paradise Service Associates, Inc.

2. Paradise Service Associates, Inc., is the owner of real property upon which much of the water distribution system lies.

3. Paradise Service Associates, Inc. is the designated “Owner” under the contract between Paradise Service Associates, Inc. and Wiseman Utilities, Inc.

4. Wiseman Utilities, Inc., did not record a claim of lien on any property owned by Paradise Service Associates, Inc.

⁶ Appellants contend that “the entire show cause proceeding and all determinations made in such a proceeding, are statutory issues that are reviewed de novo,” Appellants’ Opening Brief, p. 9, citing Williams v. Athletic Field, Inc., 155 Wn. App. 434, 440, 228 P.3d 1297, review granted, 169 Wn.2d 1021 (2010). Williams does not support this assertion.

5. No evidence exists that the homeowner members of Paradise Service Associates, Inc., had overt control over Paradise Service Associates, Inc. regarding its contract with Wiseman Utilities, Inc.

6. Paradise Service Associates, Inc., is not the construction agent, as defined in RCW 60.04.021, for its homeowner members relative to the contract with Wiseman Utilities, Inc., to replace the water distribution system owned by Paradise Service Associates, Inc.

7. Paradise Service Associates, Inc., is not the common law agent for its homeowner members relative to the contract with Wiseman Utilities, Inc., to replace the water distribution system owned by Paradise Service Associates, Inc.

8. Wiseman Utilities, Inc., recorded a Claim of Lien under RCW 60.04 against the plaintiffs' individual properties under Mason County Recording Numbers 1950896 and 1951403. Plaintiffs are homeowner members of Paradise Service Associates, Inc. With the exception of Robert A. and Marilyn M. Miller, plaintiffs are also officers and directors of Paradise Service Associates, Inc.

9. Wiseman Utilities, Inc.'s Claims of Lien under RCW 60.04 recorded under Mason County Recording Numbers 1950896 and 1951403 sought by their terms to encumber each plaintiff's property with the entire

amount of its alleged contract claim against Paradise Service Associates, Inc.

10. Plaintiffs are the prevailing party herein and are entitled to their attorney fees and costs associated with bringing this special proceeding under RCW 60.04.081.

11. Plaintiffs have waived their right to an award of attorney fees and costs.

This court reviews the trial court's findings of fact to determine whether substantial evidence supports them. Union Local 1296, Internat'l Assn. of Firefighters v. Kennewick, 86 Wn.2d 156, 161, 542 P.2d 1252 (1975) (noting the Court is "'firmly committed to the rule that the findings of fact of the trial court will not be disturbed on appeal if evidence is present in the record to support the findings.'" (quoting Sylvester v. Imhoff, 81 Wn.2d 637, 639, 503 P.2d 734 (1972))). Respondents submit that substantial evidence supports the trial court's findings.

To the extent this court construes the lien statute, review is de novo. Williams v. Athletic Field, Inc., 155 Wn. App. 434, 440, 228 P.3d 1297, review granted, 169 Wn.2d 1021 (2010) ("We construe statutory construction issues de novo."); Pacific Industries, Inc. v. Singh, 120 Wn. App. 1, 6, 86 P.3d. 778 (2003).

B. The Lien Statute Must Be Strictly Construed to Determine Whether a Lien Attaches to the Property.

The lien statutes are in derogation of the common law and therefore must be strictly construed to determine whether a lien attaches. Haselwood v. Bremerton Ice Arena, Inc., 137 Wn. App. 872, 155 P.3d 952 (2007), affirmed, 166 Wn.2d 489, 210 P.3d 308 (2009). The benefit of the lien statute extends only to those who clearly come within the statute's terms. TPST Soil Recyclers of Washington, Inc. v. W.F. Anderson Construction, Inc., 91 Wn. App. 297, 300, 957 P.2d 265 (1998). A lien claimant must clearly demonstrate satisfaction of all statutory requirements for the lien to be valid. Williams v. Athletic Field, Inc., 155 Wn. App. 434, 441, 228 P.3d 1297, review granted, 169 Wn.2d 1021 (2010); Lumberman's of Washington, Inc. v. Barnhardt, 89 Wn. App. 283, 289, 949 P.2d 382 (1997) ("One claiming the benefits of the lien must show he has strictly complied with the provisions of the law that created it."). A lien claim is invalid if it does not substantially comply with the statutory requirements. 155 Wn. App. at 442. If a lien complies with the statutory requirements, the statute is liberally construed "to provide security for all parties intended to be protected by its provisions." Haselwood, 166 Wn.2d at 498, ¶ 9. Thus, for example, a lien is invalid where the lien claimant files a claim of lien against property other than

that owned by the owner who ordered the work done (or that owner's common law or construction agent).

The lien statute contains protections for property owners as well as contractors. The Legislature made comprehensive changes to the lien statutes in 1991 and 1992, initially to address consumer protection problems relating to construction liens. A legislative task force developed proposed legislation to address concerns from consumers and all segments of the construction industry. Final Bill Report, SSB 5497, Chapter 281, Laws 1991, pp. 1-2. Changes relevant to this appeal are discussed below.

To determine whether a lien attaches, one begins the analysis with RCW 60.04.021. That statute governs whether a lien is authorized. An unauthorized lien will not attach to the property. The statute provides: "any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment **furnished at the instance of the owner, or the agent or construction agent of the owner.**" RCW 60.04.021 (emphasis added). One must determine who the owner is and whether any agency exists.

The 1992 Legislature removed the term "owner" from RCW 60.04.011, the definitions provision of the statute, which previously

defined “owner” as “the record holder of any legal or beneficial title to the real property to be improved or developed.” Laws 1992, ch. 126, § 1.

The Legislature also amended RCW 60.04.051, which identifies what property is subject to a lien. The land improved is “subject to a lien **to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent, the labor, professional services, equipment or materials were furnished**, as the court deems appropriate for satisfaction of the lien.” RCW 60.04.051. The Legislature changed the language of the statute to clarify “that the interest in land referred to is that of the owner who orders the work done, as opposed to some other owner.” Final Bill Report, ESB 6441, Chapter 126, Laws 1992, § 5, p. 2. Here, the owner who ordered the work done was PSA Inc. PSA Inc. owns 100 percent of the water distribution system.

The Legislature made changes to the notice provision. For commercial construction, as here, “those who contract directly with the owner are not required to give preclaim notice.” Final Bill Report, SSB 5497, Chapter 281, Laws 1991, p. 2 (codified at RCW 60.04.031(2)(a)). Wiseman Utilities gave no pre-claim notice to any of the officers and directors against whose properties it filed claims of lien. The court may infer that Wiseman gave no pre-claim notice because it knew it contracted

directly with the owner of the water distribution system and, as such, no pre-claim notice was required.

Here, the owner of the water distribution system, PSA Inc., directly ordered the work done by contract with Wiseman Utilities. The evidence shows that work was done throughout Paradise Shore Estates on property owned by PSA Inc., along street rights-of-way, and to individual lots. PSA Inc. owns the entire water distribution system, no matter on whose property it lies. Only land owned by PSA Inc. is subject to Wiseman's lien under the statute. That land is subject to a lien for 100 percent of the value of the work.

Wiseman cannot meet the statutory requirements for its lien to attach to the officers and directors' properties because (1) it had no direct contract with the officers and directors (or any other individual property owner) to improve the water system, and (2) no statutory agency relationship existed between the individual property owners and PSA Inc. that could give rise to lien rights.⁷

⁷ Wiseman admits that PSA Inc. is not a common law agent of its homeowner members. Appellant's Opening Brief, p. 12. Thus, no lien can be valid on that basis.

C. **PSA Inc. Is Not A Construction Agent Under Its Contract With Wiseman Utilities to Replace Its Water Distribution System.**

To show it has a valid lien, Wiseman must prove that PSA Inc. was a statutory construction agent for its member homeowners relative to replacing the water distribution system. On the evidence before it, the trial court affirmatively found that PSA Inc. was neither a common law agent nor a construction agent of its homeowner members. This court may not disturb that finding if substantial evidence supports it. W.R.P. Lake Union Limited Partnership v. Exterior Services, Inc., 85 Wn. App. 744, 750, 934 P.2d 722 (1997).

RCW 60.04.011(1) defines a construction agent:

“Construction agent” means any registered or licensed contractor, registered or licensed subcontractor, architect, engineer, or other person having charge of any improvement to real property, who shall be deemed the agent of the owner, for the limited purpose of establishing the lien created by this chapter.

Only one reported case interprets this provision of the lien statute. In Henifin Construction, LLC v. Keystone Construction, 136 Wn. App. 268, 145 P.3d 402 (2006), the court deemed Keystone to be a construction agent: “when McDonald’s placed Keystone in charge of the construction project, the statutes deemed Keystone to be McDonald’s construction agent for the purposes of establishing a lien.” 136 Wn. App. at 275. In that case, it was undisputed that McDonald’s, the property owner, put

Keystone, a registered and licensed contractor, in charge of constructing its restaurant. 136 Wn. App. at 274. Henifin, a subcontractor who dealt with Keystone and received authorization for change orders, was entitled to file a lien on McDonald's property for the amount of the unpaid change orders. Id. The facts determined the court's finding. The court distinguished Henifin from an earlier case under the previous lien statute in which the property owners' son hired a construction company to make improvements to his parents' property. McCombs Construction v. Barnes, 32 Wn. App. 70, 645 P.2d 1131 (1982). Under the prior statute,⁸ the McCombs court found the son was not a statutory agent for his parents because he had put himself in charge of the project and was not in charge of it for the benefit of his parents. The court noted that "[a] statutory agent who may establish a lien under the statute is a limited one." 32 Wn. App. at 74. The only category that could conceivably apply to the son was "person having charge" of the project for the owner. The record did not

⁸ The prior statute read:

(E)very registered or licensed contractor, registered or licensed subcontractor, architect, or person having charge, of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter. . .

Former RCW 60.04.010.

support a finding that the parents made their son their statutory agent. Id.
So, too, here.

Under RCW 60.04.011(1), the only category that could conceivably apply to PSA Inc. is “other person having charge of any improvement to real property” because PSA Inc. is not a contractor, subcontractor, architect, or engineer. But the evidence shows, and the trial court correctly found, that PSA Inc. had charge of the project as *owner*, not as agent. Although Wiseman takes pains to construct an argument that PSA Inc. was a construction agent, the evidence belies that interpretation: PSA Inc. owns and operates the water distribution system that serves the homes in Paradise Shore Estates. PSA Inc. can act only through its officers and directors. No individual homeowner may direct PSA Inc.’s activities. No individual officer or director may direct PSA Inc.’s activities. Rather, only the board of directors, acting in its official capacity, may direct PSA Inc. (and the board of directors may not be personally liable for their official acts unless grossly negligent). PSA Inc. contracted with Wiseman Utilities to replace its entire water distribution system. The contract identifies PSA Inc. as the Owner and Wiseman Utilities as the Contractor. The contract provides that PSA Inc. shall communicate with subcontractors only through Wiseman. That the improvement touched and benefited the individual homeowner’s

properties does not make PSA Inc. their agent for purposes of the lien statute. Hewson Construction, Inc. v. Reintree Corp., 101 Wn.2d 819, 825, 685 P.2d 1062 (1984) (“Further, the mere fact that the owners’ property is benefited by the [improvement] does not itself make the interest lienable.”).

The trial court found no evidence in the record that the individual property owners in Paradise Shore Estates either authorized or directed the work to replace the water distribution system. The trial court found no evidence that the individual property owners could tell PSA Inc. to stop contracting with Wiseman. The individual property owners had no direct control and no overt control over PSA Inc. relative to replacing the water distribution system. CP 171-72. The trial court made findings of fact relative to the construction agent issue based on the evidence submitted:

1. Paradise Service Associates, Inc., is the owner of the water distribution system that was the subject of the contract between Wiseman Utilities, Inc. and Paradise Service Associates, Inc.

2. Paradise Service Associates, Inc., is the owner of real property upon which much of the water distribution system lies.

3. Paradise Service Associates, Inc. is the designated “Owner” under the contract between Paradise Service Associates, Inc. and Wiseman Utilities, Inc.

4. Wiseman Utilities, Inc., did not record a claim of lien on any property owned by Paradise Service Associates, Inc.

5. No evidence exists that the homeowner members of Paradise Service Associates, Inc., had overt control over Paradise Service Associates, Inc. regarding its contract with Wiseman Utilities, Inc.

6. Paradise Service Associates, Inc., is not the construction agent, as defined in RCW 60.04.021, for its homeowner members relative to the contract with Wiseman Utilities, Inc., to replace the water distribution system owned by Paradise Service Associates, Inc.

CP 10.

Wiseman makes a strained argument lacking authority that the absence of evidence of homeowner control makes no difference because PSA Inc. was incorporated by the homeowners or their predecessors to have “charge of the water system improvements to their real property.” Appellants’ Opening Brief, p. 15.⁹ Wiseman argues facts that are not in evidence (e.g., that the owners authorized PSA Inc. to enter into the contract with Wiseman) and that are contrary to the evidence (e.g., that the homeowners are the owners of the water distribution system). Wiseman’s argument cannot negate the facts in evidence. Further, the court need not consider arguments unsupported by citation to authority. Cowiche

⁹ At another point, Wiseman argues that “Paradise Service Associates was created by the Plaintiffs and their predecessors for the expressed purpose of having charge of the improvement constructed by Wiseman Utilities.” Appellants Opening Brief, p. 18. This statement is patently inaccurate. The evidence shows PSA Inc. was established in 1992 to own, construct, and operate a water distribution system for the owners in Paradise Shore Estates, CP 195-97, long before PSA Inc. contracted with Wiseman in 2009 to replace the system. CP 379-87.

Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (“grounds argued are not supported by any reference to the record nor by any citation of authority; we do not consider them”); RAP 10.3(a)(5).

Wiseman Utilities has no basis under the lien statute to claim liens against the officers and directors’ individual properties for any contract balance owed under Wiseman’s contract with PSA Inc. to replace PSA Inc.’s water distribution system.

The court may view the trial court’s Finding of Fact No. 6 as a mixed question of fact and law. To the extent that Finding of Fact No. 6 contains a conclusion of law, Findings No. 1-3 and No. 5 support the trial court’s conclusion that PSA Inc. is not a construction agent here.

D. RCW 60.04.081 Provides for a Summary Proceeding to Release Invalid Liens.

The 1991 legislation provides an expedited procedure to release liens from property where the liens are either (i) frivolous and made without reasonable cause, or (ii) clearly excessive. RCW 60.04.081. Liens cloud title and otherwise impair a property owner’s ability to use and dispose of the property freely. Knibb v. Mortensen, 89 Wash. 595, 154 P. 1109 (1916). RCW 60.04.081 provides:

Any owner of real property subject to a recorded claim of lien under this chapter...who believes the claim of lien to

be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court...for an order directing the lien claimant to appear before the court...and show cause, if any he or she has, why the relief requested should not be granted.

RCW 60.04.081.

The officers and directors filed a motion to release the liens on their properties as both frivolous and clearly excessive under the statute.

1. Frivolous and Made Without Reasonable Cause.

“[F]or a lien to be frivolous, the decision that the lien was improperly filed must be clear and beyond legitimate dispute.” W.R.P. Lake Union Ltd Partnership v. Exterior Services, Inc., 85 Wn. App. 744, 752, 934 P.2d 722 (1997). The trial court found Wiseman Utilities’ liens against the officers and directors’ properties invalid on the following facts: (i) the officers and directors (or other members) do not own the water distribution system; (ii) the officers and directors (or other members) did not contract with Wiseman for replacement of the water system in an individual capacity; (iii) PSA Inc. was not the common law agent for the officers and directors (or other members); (iv) nor was PSA Inc. the officers and directors’ (or other members’) construction agent.

The trial court found that PSA Inc. was “clearly not” the construction agent for its individual homeowner members. The trial court reasoned that because a homeowner association could possibly be a

construction agent in some case, the liens were not frivolous in this case.

4/19/10 RP 31.

Respondents contend that the trial court's finding in this case meets the "clear and beyond legitimate dispute" test and the liens should have been released as frivolous and made without reasonable cause. That is to say, the statute does not authorize Wiseman's filing claims of lien against the officers and directors' private properties instead of property owned by PSA Inc. for amounts it alleges it is due under the contract with PSA Inc.

The trial court correctly found that the liens were clearly excessive under the statute.

2. Substantial Evidence Supports the Trial Court's Finding That Wiseman's Liens Were Clearly Excessive.

Wiseman Utilities' liens against the officers and directors' properties were clearly excessive for two reasons: (1) If the liens had been proper against any member's individual property, then a claim of lien should have been recorded against all association members' individual property; and, (2) The lien amount against any one member's property may not be more than that member's proportionate share in the association.

Here, Wiseman Utilities, Inc. claimed the full amount of its lien against each of the targeted properties against which it filed its claim of lien. By targeting these properties, Wiseman attempts to subvert the non-liability of the officers and directors in this case -- the elected and unpaid individuals who volunteer to manage PSA Inc. for the benefit of their community. No authority permits Wiseman either (i) to file liens against the officers and directors' property for PSA Inc.'s debt; or, (ii) to claim the full amount of its lien against more than one property. Wiseman cites no authority on point. The scant authority Wiseman cites is either not binding on this court, is distinguishable, or both.

The lien statute allows Wiseman to claim only the contract price in its lien. RCW 60.04.021. Here, Wiseman claims his contract price due from PSA Inc. is \$85,649.66.¹⁰ He claims \$85,649.66 against 12 separate properties, for a cumulative total lien of \$1,027,795.92. The statute allows Wiseman to claim no more than \$85,649.66, and *any* amount claimed in excess of \$85,649.66 is clearly excessive under RCW 60.04.081. The reason is simple: the lien statute allows a proper lien claimant to burden an owner's real property only for the agreed amount for the work (the

¹⁰ Whether this is the correct amount is another question and that question was not before the trial court. Wiseman's lawsuit on the contract is pending in Mason County Superior Court under Cause No. 10-2-00217-4.

contract price) that the owner fails to pay. In its wholesale revision of the statutes in 1991-92, the Legislature balanced the interests of lien claimants and consumers. This balancing protects owners from having their property burdened by liens that are not the property owner's debts and from liens that are more than the amount agreed to for the work. It protects contractors by allowing them to secure payment through a lien where they meet the statutory requirements, i.e., the work was authorized by the owner of the land upon which the improvement was made (directly or through an agent), for the unpaid contract price, to the extent of the owner's interest in the property. RCW 60.04.011(2), .021, .051. The lien statute does not allow a lien claimant to file a series of liens in the full amount claimed against multiple properties (even if the liens were properly claimed against those properties).

a. Wiseman Utilities Must Claim Its Lien Against All Association Members If It Claims a Lien Against Any Member's Property.

Assuming, arguendo, that any authority exists to allow Wiseman Utilities to claim lien rights against any individual association member's property for work on a water distribution system owned by PSA Inc., then all members of the association would similarly be subject to a lien in their proportionate share of membership (if, contrary to the evidence, any individual's private property were subject to Wiseman's lien). The water

distribution system was to serve at least 159 properties. CP 387 (“Connection to private services, 159 each at \$175.00.”). Yet, Wiseman claims liens against only 10 members of the association. The evidence shows that Wiseman sought the entire amount of his lien claim against the property of each officer and directors’ private property.

Wiseman Utilities cites no authority for the proposition that it may pick and choose among the 159 homeowner members of PSA Inc. and file liens against fewer than all of them. Washington authority does not permit Wiseman’s lien against the targeted properties.

The general rule is that a single mechanic’s lien against more than one lot or parcel of land cannot be enforced against less than the entire property liened, without first showing what part of the entire lien may properly be allocated to the lot or tract against which enforcement is sought.

Associated Sand & Gravel Co., Inc. v. DiPietro, 8 Wn. App. 938, 509 P.2d 1020 (1973).

In Associated Sand & Gravel, the lien claimant filed an unapportioned lien against all lots in a subdivision for which its work remained unpaid. Unlike here, the case involved multiple lien claimants and financing parties. It also involved a single owner of the entire development. The general rule applies, however: unallocated liens are inappropriate; a lien must apportion the amount due to all affected

properties. See Westinghouse Electric Supply Co. v. Hawthorne, 21 Wn.2d 74, 81, 150 P.2d 55 (1944) (holding lien claimants have the burden of proving the correct amount to be attached to each lot liened against). The court in Associated Sand & Gravel noted that allowing an unapportioned lien would enable lien claimants to “shift their liens as to unduly burden some of the lien subjects and relieve others,” which is inconsistent with the lien statute and otherwise offensive. 8 Wn. App. at 942-43, quoting with approval Weaver v. Harland Corp., 10 S.E.2d 547, 548 (Va. 1940). If Wiseman’s lien were appropriate against any individual homeowner’s property, it must apportion the lien against all properties in the development.

b. No Authority Allows Wiseman Utilities to Claim the Full Amount of Its Lien Against Each Homeowner’s Property.

Wiseman Utilities claims the full amount of its claim of lien, i.e., \$85,649.66, against each of the plaintiffs’ individual properties. CP 393-98. Even if one were to assume that the claim of lien were proper against the individual homeowners, which it was not, no authority exists to allow Wiseman to claim the full amount of his claim of lien against multiple homeowners. If Wiseman Utilities were allowed so to do, it could conceivably foreclose against multiple properties and seek to collect 12 times what it claims is due. No such windfall is allowed under the statute.

The statute allows for a lien only for “the contract price.” RCW 60.04.021. Even Wiseman Utilities claims that only \$85,649.66 of the contract price of \$598,340.64 remained due when it filed its claim of lien. Allowing the claim of lien to stand against the officers and directors’ properties would give Wiseman Utilities lien rights in the aggregate amount of more than \$1,000,000. That is disallowed as clearly excessive under RCW 60.04.081. Release of the liens as clearly excessive was proper and supported by the evidence.

c. Wiseman Utilities Filed the Liens Against the Board Members to Exert Pressure on Them to Approve and Pay the Balance It Claimed Was Owing Under PSA Inc.’s Contract, Constituting Bad Faith.

The officers and directors may show Wiseman’s liens were clearly excessive by showing they were claimed in bad faith. Pacific Industries, Inc. v. Singh, 120 Wn. App. 1, 10, 86 P.3d 778 (2003) (stating the rule that lien will be declared invalid because it is excessive if the amount is claimed in bad faith). Where the lien is made in bad faith, it fails to come within the ambit of the statute. DKS Construction Management, Inc. v. Real Estate Improvement Company, LLC, 124 Wn. App. 532, 536, 102 P.3d 170 (2004) (Washington “courts have consistently denied relief to lienholders whose asserted mechanics’ liens did not strictly come within the terms of the statute.”).

Our Supreme Court dismissed a lien foreclosure action because the claimant filed a lien “containing an obvious and willful excess” in an early case. Knibb v. Mortensen, 89 Wash. 595, 154 P. 1109 (1916). The lien burdened a single property for an amount that was twice what was due. The court noted that the lien laws burden the sale of property and therefore liens must be claimed in good faith. “There was no time when this plaintiff could honestly have thought himself entitled to more than half of what he claimed in his notice of lien.” 89 Wash. at 596. Here, Wiseman Utilities could not have honestly thought it could burden each of plaintiffs’ properties with the amount stated in its claim of lien.

In other cases that follow the general rule, the facts determine the outcome.

In Pacific Industries, Singh, a developer, had a contract with Pacific Industries to develop Pacific Industries’ properties. Singh was to receive 50 percent of profits from sale of the developed property. In 2001, the parties decided not to develop any more projects together. One project, Poole’s Park, was partially completed. The parties reviewed accountings regarding net profits of their projects. Pacific Industries told Singh the Poole’s Park project would generate no profits and thus it owed Singh no money for that project. Singh filed a claim of lien against the

Poole's Park property in the amount of \$250,000, an amount he believed was half the net profits for that project. 120 Wn. App. at 4-5.

Pacific Industries commenced an action under RCW 60.04.081 to release Singh's lien as both frivolous and clearly excessive. The parties hired an independent accountant to prepare a report regarding the actual profits from the Poole's Park project. The accountant spent six months preparing the report that concluded the Poole's Park project operated at a loss. There were no profits. 120 Wn. App. at 5.

The court of appeals stated the general rule that a lien will be declared invalid because it is excessive if the amount is claimed with intent to defraud or in bad faith. 120 Wn. App. at 10, citing CHG Int'l, Inc. v. Platt Elec. Supply, Inc., 23 Wn. App. 425, 426, 597 P.2d 412 (1979). The court determined, however, that Singh's lien was not clearly excessive under the facts of that case. The court found no evidence in the record that Singh claimed the lien amount in bad faith or with the intent to defraud. 120 Wn. App. at 11.

In CHG, the court discussed bad faith. "To constitute bad faith, the overcharge must be knowingly made." 23 Wn. App. at 426. Under the facts of the case, the court ultimately concluded that there was no evidence of bad faith and no misuse of the lien statute. Id. at 426-27. Although CHG is a pre-RCW 60.04.081 case, the Pacific Industries court

affirms the continuing vitality of the rule that bad faith makes a lien amount excessive.

Here, in contrast to CHG and Pacific Industries, Wiseman Utilities targeted its claims of lien against the officers and directors' individual properties to secure payment of its final bill under the PSA Inc. contract explicitly to exert leverage on the board to approve and pay Wiseman Utilities' bill. Wiseman Utilities knew PSA, Inc. disputed portions of the final bill. Rather than securing payment by claiming a lien against property owned by PSA Inc.—the party to its contract—Wiseman Utilities knowingly and deliberately filed claims of lien in the full amount of its claimed final bill against 12 individual properties owned by board members (and one non-board member with the same name as a board member). After PSA Inc.'s counsel explained why the liens were wrongful, Wiseman Utilities steadfastly refused to release the liens. At the time it refused to release the liens, Wiseman Utilities could have filed a claim of lien against PSA Inc. property because the 90-day limitation had not yet run. The last work on the project was October 9, 2009. The last day to file a claim of lien was January 7, 2010. PSA Inc.'s counsel had conversations and correspondence with Wiseman's counsel regarding the wrongfulness of the liens between December 29, 2009 and January 5, 2010. Wiseman Utilities explicitly stated that the liens against the board

members' properties gave it leverage to get final payment in the full amount claimed.

Wiseman's purpose in filing the liens constitutes bad faith and an abuse of the lien statute. The trial court properly found the liens to be clearly excessive and released them. This court should affirm.

E. Respondents Prevailed in the Trial Court and Were Entitled to Attorneys Fees and Costs.

The officers and directors prevailed in the trial court, entitling them to an award of attorney fees and costs under RCW 60.05.081(4). Respondents waived their right to fees and costs to bring finality to this portion of Wiseman's dispute with PSA Inc. Respondents ask this court to award them their attorney fees and costs on appeal under the statute and RAP 18.1(a).

V. CONCLUSION

The liens Wiseman Utilities filed against PSA Inc.'s officers and directors' individual private property were invalid when filed because they did not come within the ambit of the construction lien statute. PSA Inc. as owner ordered the improvements made to the water distribution system under contract with Wiseman Utilities. No construction agent was involved. Substantial evidence supports the trial court's findings of fact. The facts support the trial court's conclusion that Wiseman Utilities' liens

were clearly excessive under the statute. The liens were properly released. Although the trial court did not so find, the evidence also supports a conclusion that the liens were frivolous and made without reasonable cause.

Respondents were the prevailing party in the trial court and were entitled to their attorney fees and costs. Assuming respondents prevail on appeal, this court should award the officers and directors their attorney fees and costs on appeal.

RESPECTFULLY SUBMITTED this 6th day of December, 2010.

FORSBERG & UMLAUF, P.S.

By: 

John F. Jenkel, WSBA #16085

Susan K. McIntosh, WSBA #26138

Attorneys for Respondents

CERTIFICATE OF SERVICE

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

On the date given below I caused to be served the foregoing RESPONDENT'S BRIEF on the following individuals in the manner indicated:

Mr. Ben Cushman
Mr. Jon Cushman
Cushman Law Office
924 Capitol Way South
Olympia, WA 98501
Facsimile: 1-360-956-9795
 Via U.S. Mail
 Via Facsimile
 Via Hand Delivery
 Via E-Mail

SIGNED this 10th day of December, 2010, at Seattle,
Washington.



Jennifer L. Endres

Appendix A



MASON COUNTY
Washington
Government and Information Services

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Assessor

Parcel number: 221085200116

 [View Map](#)

Treasurer

Owner Information

PARADISE SERVICE ASSOCIATES	281 E SHORE DR GRAPEVIEW WA 98546-9727
-----------------------------	---

Taxpayer Information

PARADISE SERVICE ASSOCIATES	281 E SHORE DR GRAPEVIEW WA 98546-9727
-----------------------------	---

Legal Description

PARADISE SHORE ESTATES TR 116

Site Address

320 E OLYMPIC DR GRAPEVIEW

Reval Area ? 1

County Zoning View Zoning

Land Size* 0.00

Field Sheet ? FS 06615:116

Tax Code ? 85

Land Use ? WATER STORAGE

Census Tract [Click Here](#) Tax Code Description ? 1 54 G P3 F5 L H1

* if the value is .00(zero) then the property is most likely in a plat and acreage is not usually carried on platted lots

Last Updated: 12/01/2010
Information may be inaccurate and outdated.
Please refer to the Assessor / Treasurer Offices to verify any information

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Assessor

Parcel number: 221085200900

[View Map](#)

Treasurer

Owner Information

PARADISE SERVICE ASSOCIATES	261 E SHORE DR GRAPEVIEW WA 98546-9727
-----------------------------	---

Taxpayer Information

PARADISE SERVICE ASSOCIATES	261 E SHORE DR GRAPEVIEW WA 98546-9727
-----------------------------	---

Legal Description

PARADISE SHORE ESTATES TR A

Site Address

261 E SHORE DR GRAPEVIEW

Reval Area ? 1

County Zoning View Zoning

Land Size* 0.00

Field Sheet ? FS 06615:A

Tax Code ? 85

Land Use ? NEIGHBORHOOD PARK (10 AC)

Census Tract Click Here Tax Code Description ? 1 54 G P3 F5 L H1

* if the value is .00(zero) then the property is most likely in a plat and acreage is not usually carried on platted lots

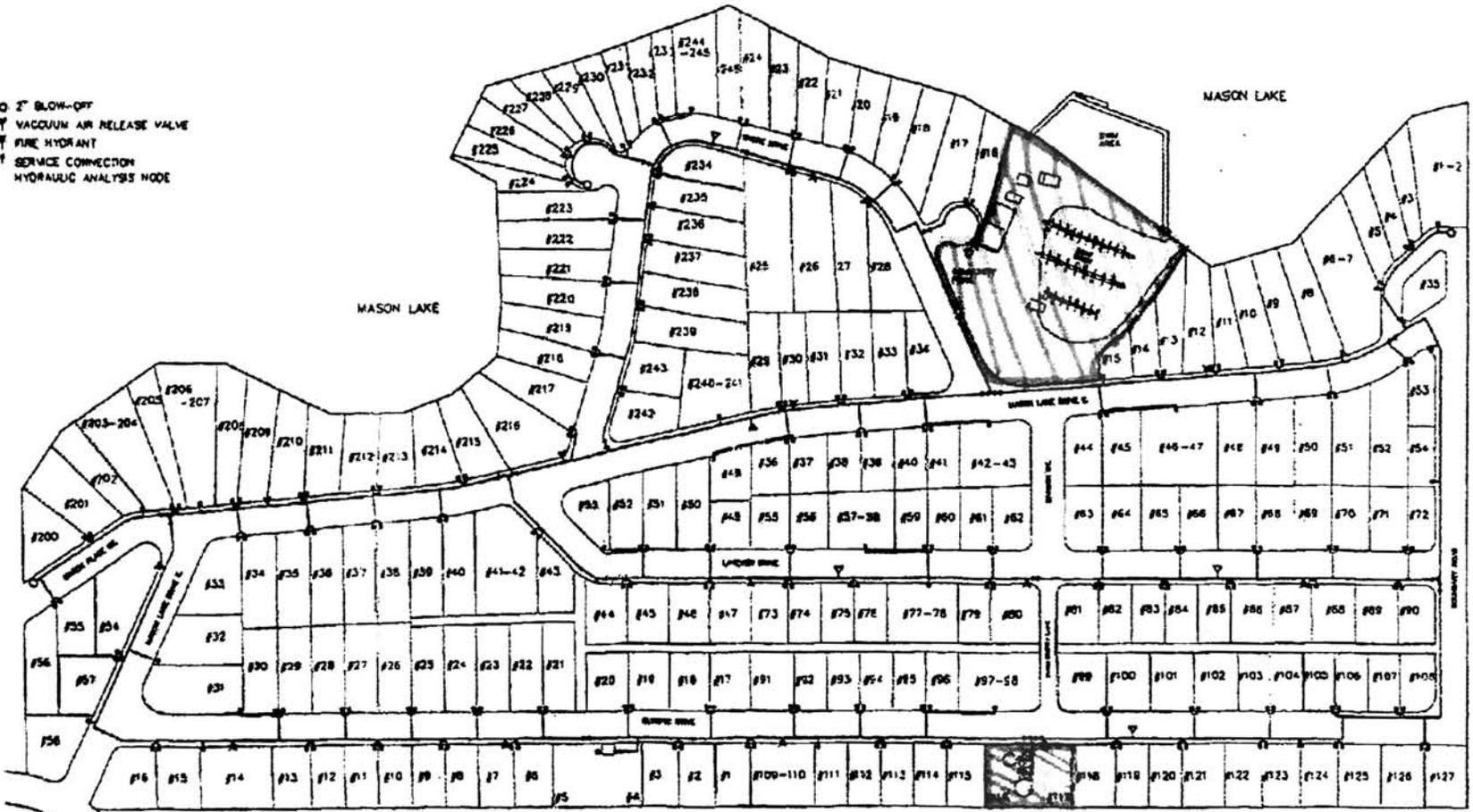
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 - ▶ Parcel Value
 - ▶ Site Built Buildings
 - ▶ MH and Personal Property
 - ▶ Sales Info
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 - ▶ Permits
 - ▶ Profile (Summary View of all items)

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Appendix B

- 2" BLOW-OFF
- ▽ VACUUM AIR RELEASE VALVE
- ▽ FIRE HYDRANT
- † SERVICE CONNECTION
- HYDRAULIC ANALYSIS NODE



Paradise Service Associates – June, 2008
 Phase II Water Distribution System

PROJECT	PARADISE ESTATES	CLIENT	PARADISE SYNC ASSOC.
NO. 08012201	DATE	JULY 8, 2008	SHEET NO.
REVISION	DATE	NO.	BY
NORTHWEST WATER SYSTEMS, INC.		DESIGN: CONSULTING ENGINEERS	
P.O. BOX 107		POST RICHMOND WA 98541	

176
 971
 Submittal

Appendix C

Presentation Date: May 18, 2010
Hearing Time: 8:30 a.m.

RECEIVED & FILED

MAY 18 2010

PAT SWARTOS, Clerk of the
Superior Court of Mason Co. Wash

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR MASON COUNTY

S. GARY and MERRISUE STEINMAN;
MARY G. and BOYD K. SMITH; LORI E.
GROSS; SUSAN OWLEY-KOENIG and
ROBERT P. KOENIG, JR.; WILLIAM B.
DAVIES; WILLIAM J. and MARLENE N.
CASMAER; GEORGE E. and VEANNE M.
YOUNG; LARRY J. PAZASKI; ROBERT A.
and MARILYN M. MILLER; and ROBERT J.
and DOROTHY E. MILLER,

Plaintiffs,

vs.

WISEMAN UTILITIES, INC.,

Defendant.

No. 10-2-00185-2

ORDER RELEASING LIENS

~~PROPOSED~~

THIS MATTER having come on regularly before the Court on Plaintiffs' Motion to Release Liens, and the Court having heard argument of counsel and having reviewed the following materials submitted in support of and in opposition to the motion, including:

1. Plaintiffs' Motion for Order to Show Cause Why Wiseman Utilities, Inc.'s Recorded Construction Liens Should Not Be Released Under RCW 60.04.081;

ORDER RELEASING LIENS - PAGE 1

458169 / 2850.0007

FORSBERG & UMLAUF, P.S.
ATTORNEYS AT LAW
901 FIFTH AVENUE • SUITE 1400
SEATTLE, WASHINGTON 98164-2050
(206) 689-8500 • (206) 689-8501 FAX

- 1 20. Notice of Presentation and proposed Order Releasing Liens;
2 21. Declaration of Ben Cushman in Objection to Proposed Order;
3 22. Plaintiffs' Response to Defendant's Objections to Proposed Order on Show
4 Cause Hearing;

5 and otherwise being fully advised in the premises, makes the following FINDINGS OF
6 FACT:

- 7 1. Paradise Service Associates, Inc., is the owner of the water distribution system
8 that was the subject of the contract between Wiseman Utilities, Inc. and Paradise Service
9 Associates, Inc.
10 2. Paradise Service Associates, Inc., is the owner of real property upon which
11 much of the water distribution system lies.
12 3. Paradise Service Associates, Inc. is the designated "Owner" under the contract
13 between Paradise Service Associates, Inc. and Wiseman Utilities, Inc.
14 4. Wiseman Utilities, Inc., did not record a claim of lien on any property owned
15 by Paradise Service Associates, Inc.
16 5. No evidence exists that the homeowner members of Paradise Service
17 Associates, Inc., had overt control over Paradise Service Associates, Inc. regarding its
18 contract with Wiseman Utilities, Inc.
19 6. Paradise Service Associates, Inc., is not the construction agent, as defined in
20 RCW 60.04.021, for its homeowner members relative to the contract with Wiseman Utilities,
21 Inc., to replace the water distribution system owned by Paradise Service Associates, Inc.
22
23

1 7. Paradise Service Associates, Inc., is not the common law agent for its
2 homeowner members relative to the contract with Wiseman Utilities, Inc., to replace the water
3 distribution system owned by Paradise Service Associates, Inc.

4 8. Wiseman Utilities, Inc., recorded a Claim of Lien under RCW 60.04 against
5 the plaintiffs' individual properties under Mason County Recording Numbers 1950896 and
6 1951403. Plaintiffs are homeowner members of Paradise Service Associates, Inc. With the
7 exception of Robert A. and Marilyn M. Miller, plaintiffs are also officers and directors of
8 Paradise Service Associates, Inc.

9 9. Wiseman Utilities, Inc.'s Claims of Lien under RCW 60.04 recorded under
10 Mason County Recording Numbers 1950896 and 1951403 sought by their terms to encumber
11 each plaintiff's property with the entire amount of its alleged contract claim against Paradise
12 Service Associates, Inc.

13 From the foregoing facts, the court makes the following conclusions of law:

14 1. Wiseman Utilities, Inc.'s Claim of Lien under RCW 60.04 against the plaintiff
15 homeowners' properties are invalid and were invalid when filed for recording.

16 2. Wiseman Utilities, Inc.'s Claim of Lien under RCW 60.04 against the plaintiff
17 homeowners' properties was not frivolous under RCW 60.04.081.

18 ~~3. Wiseman Utilities, Inc.'s Claim of Lien under RCW 60.04 against the plaintiff~~
19 ~~homeowners' properties is clearly excessive under RCW 60.04.081.~~

20 Now, therefore, it is hereby

21 ORDERED that Plaintiffs' Motion to Release Liens is GRANTED. The liens filed
22 under Mason County Recorder's Numbers 1950896 and 1951403 are hereby RELEASED. It

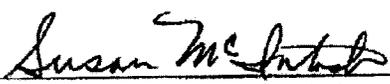
23

1 is further ORDERED that the parties shall bear their own attorney's fees and costs related to
2 this action.

3 DATED this 18 day of May, 2010.

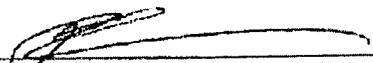
4
5 
6 Judge Amber Finlay AMBER L. FINLAY

7 Presented by:
8 FORSBERG & UMLAUF, P.S.

9 
10 John F. Jenkel, WSBA #16085
11 Susan K. McIntosh, WSBA #26138
12 Attorneys for Plaintiffs

13
14 HOSS & WILSON-HOSS
15 Robert D. Wilson-Hoss, WSBA #8620
16 Attorneys for Plaintiffs S. Gary Steinman
17 and Merrisue Steinman

18 APPROVED AS TO ~~FORM~~ NOTICE OF
19 PRESENTATION WAIVED:

20 CUSHMAN LAW OFFICES
21 
22 Ben Cushman, WSBA #26358
23 Attorneys for Defendant

Lana Sheldon

From: Jennifer L. Endres [JEndres@forsberg-umlauf.com]
Sent: Monday, December 06, 2010 4:47 PM
To: Tac
Subject: Brief for Filing

Please file the attached brief with the Court of Appeals by 5 p.m. Please print the signature pages in color. Please get a conformed copy. Thanks

Jen

Jennifer L. Endres | Forsberg & Umlauf, P.S.
Legal Assistant
901 Fifth Avenue, Suite 1400 | Seattle, WA 98164
Tel: 206-689-8500 | Fax: 206-689-8501 | Dir: 206-689-8578
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