

NO. 41448-1-II

CLERK OF COURT
JAN 11 2011
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STATE OF WASHINGTON
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DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

PETER T. LITTLEFAIR,
Appellant,

v.

DAVID M. SCHULZE ET UX, ET AL,
Respondents.

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAMANIA COUNTY

The Honorable BRIAN P. ALTMAN, Judge

REPLY BRIEF

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I. Whether Gordon Road is a separate parcel is of no consequence.

At page 1, Mr. Schulze stresses that Gordon Road is not part of a separate parcel.

Whether Gordon Road is a separate parcel or an easement, is of absolutely no consequence to the equitable principle created by Van Buren v. Trumbull, 92 Wash. 691, 159 Pac. 891 (1916).

The fact that all of the lot owners retain the right to use it, defeats Mr. Schulze's right to fence off any portion of it. Following Mr. Schulze's logic, the Fosters could just as easily sell a lot with the road as easement access, then fence off a significant portion of that 40 foot width of roadbed, as Mr. Schulze has now done.

Neither the Fosters nor Mr. Schulze, nor any other lot owner within Foster's Addition, has the right to do that, and that has been the law since Van Buren. The basis of the rule set out in Van Buren is based upon equity. This is an equity case.

The following passages from Van Buren cannot be better quoted:

Van Buren at 698:

“[P]urchasers of the lots acquired a contract right in the street. They acquired the right to use it themselves, and the right to have the street open to all others whom they may desire to use it.”

Van Buren reasoned at 694:

"[I]f the common grantor could not deny the full effect of his deed and the right of ingress and egress, his grantee could not do so."

It would be a different outcome if Gordon Road was created as between Mr. Littlefair and Mr. Schulze only. That is not the case.

Being a common dedication, the other lot owners have equal claims to use Gordon Road, which prohibits what Mr. Schulze is getting away with. Mr. Schulze is asking this Court to ignore Van Buren and its progenies.

II. The servient estate is dictating to the dominant estate.

At page 2, Mr. Schulze argues that Mr. Littlefair wants this Court to overturn the well-established law of easements, that a servient estate owner may use an easement area for any purpose that does not interfere with the dominant estate's proper enjoyment of the easement.

This cannot be farther from the truth: Mr. Littlefair wants to use that portion of Gordon Road which Mr. Schulze graded and fenced off. Fencing off the north side of Gordon Road prevents anybody from driving over that area in order to pass fellow motorists, to push snow onto that portion of the road without causing damage to either equipment or the

fence, and to maintain the drainage ditch within the 5-foot wide utilities easement.

Mr. Schulze's argument goes against the holding of Thompson v. Smith, 59 Wash.2d 397, 367 P.2d 798 (1962). Mr. Schulze is dictating to the dominant estate, rather than being servient to it.

III. The fence does interfere with Mr. Littlefair's use of the easement.

At page 2, Mr. Schulze argues that his fence does not interfere with Mr. Littlefair's use of the easement.

Nowhere did Mr. Schulze demonstrate that Mr. Littlefair can access the area which was fenced off, or maintain the drainage ditch within the 5-foot wide utilities easement, or that other lot owners have that same access. Only Mr. Schulze has that access, which is contrary to the Fosters' intentions.

IV. Road Maintenance.

At page 9 Schulze asserts that he was the only one maintaining the roadway. This is contradicted at RP 139 Line 13.

V. Crown on the Road.

At page 9, Schulze claims that there was no crown on Gordon Road, even though at RP 167 he admitted that that portion of Gordon Road did have a crown.

VI. Abandonment of the theory of the case.

At page 13, Mr. Schulze argues that Mr. Littlefair abandoned his original theory of the case – that Gordon Road is an easement.

That is not at all true. Throughout the Appellant’s Amended Brief, Mr. Littlefair preserved his claims based upon easement law: “Assuming that Gordon Road is an easement” (page 27); “Assuming that laws of easement apply” (page 30); “This fence, assuming that the right-of-way is an easement” (page 36); specific reference to Gordon Road as an easement at page 41; “Should this Court conclude that Gordon Road is an easement” (page 47). This retort does not include the plethora of citations or analysis made under the easement theory of Mr. Littlefair’s claims.

VII. Supposed “New” Issues.

At page, 13 Mr. Schulze also argues that Mr. Littlefair is now arguing new issues – citing the 1971 Skamania County Ordinance and the

fact that this ordinance requires roads to be a minimum 30 feet wide with two lanes for traffic travel.

This 1971 Ordinance and what it requires, is not a “new issue” barred under RAP 2.5: this is evidence, albeit “new”, which bears upon the old issue of the intentions of the Fosters when they created Gordon Road: What was their intentions when they created Gordon Road? How wide did they intend Gordon Road to be? How many traffic lanes did the Fosters intend Gordon Road to have? The Fosters’ intent is an established issue throughout the history of this case. Mr. Schulze cited to the intentions of the Fosters 15 times (page 1, 11, 4 times on page 15; 5 times on page 16; 3 times on page 17; 26) in his responsive brief.

The trial court’s findings and conclusion (CP 60) addresses the Foster’s intentions at CP 62 (twice) and at CP 63 (4 times).

At RP 191, Mr. Schulze argued in closing:

“But we obviously have a question of law that Your Honor needs to address, and that is what was the intention of the Fosters at the time that they created Foster’s Addition”.

Attached in the Appendix to this Reply Brief are the clear and self-evident intentions of the Fosters: these documents are from the files of the “Skamania County Planning Department”, nowadays known as the

“Skamania County Community Development Department”, on the subdivision in question, Foster’s Addition.

Reviewing these documents brings only one conclusion: that Gordon Road is a private road, that the Fosters intended that Gordon Road comply with County road standards, and they even asked for a variance to those standards (page 9, letter from Tenneson Engineering Corporation dated May 16, 1977, asks the County to allow Gordon Road to be 40 feet wide instead of 60 feet).

The reference to a 60 feet minimal road width can be found in SCO 1971-1 §12.22 and .24 (attached as Appendix 7 and 8 to Amended Appellant’s Brief), which requires 60-foot wide right-of-ways.

VIII. Intention that Gordon Road be a private road.

Mr. Schulze on page 15 of his brief:

“In this case, there is no dispute that the original developer intended for Gordon Road to provide access for the various lots depicted on the plat map. The fact that the Plat depicts both a private road (Gordon Road) and a county road (Foster Road), evidence that the original platter knew exactly what he was doing when he labeled Gordon Road as a private road.”

The fact that Gordon Road was to be a private road is consistent with Appendix Page 4, a June 17, 1977 letter from the Skamania County Planning Department, confirming that Gordon Road will be a private road.

IX. That Butler is distinguishable.

Mr. Schulze argues at Page 16 that Butler v. Craft Eng. Construction, 67 Wash.App. 684, 843 P.2d 1071 (I, 1992) is distinguishable in that the road in Butler involved an “undivided one-third interest” and not an easement by plat. So each lot owner in the Foster’s Addition owns a one-eighteenth undividable interest in Gordon Road, according to the law set out in Van Buren, and this distinguishing feature is a non-issue, as under each approach the same right to use the private roadway exists. This seems to be a “red herring” argument.

X. The unreasonableness of the fence to the enjoyment of easement rights.

At page 17, Mr. Schulze argues that his fence does not interfere with Mr. Littlefair’s use of Gordon Road. So every time that Mr. Littlefair needs to push snow over the fence, he has to take the fence down? Or damage it and get summoned to court? This is not what Thompson v.

Smith, intended. That concrete slab in Thompson was in a road that was not being used at that point in time, and was to be removed once it got in the way. In the case at bar, the fence is in an actively used roadway, interferes with safe snow plowing, safe traffic passing, safe emergency response vehicle access, and interferes – cut off all access - to the drainage ditch within the utilities easement.

XI. That no legal authority was cited to use the full 40-foot wide private roadway.

At page 18, Mr. Schulze argues that Mr. Littlefair did not cite to authority for the proposition that he has the right to use the entire 40-foot wide section of Gordon Road.

Van Buren is the authority which was cited for that argument. Van Buren also supports the position that Mr. Schulze has no legal right to fence off any portion of Gordon Road, a limitation that even the Fosters faced when they sold their lots to grantees like Mr. Schulze and Mr. Littlefair. Other case authorities following Van Buren, along with Skamania County Zoning Laws, were cited in the Opening Brief.

XII. That SCO 1971-1 Road Standard only applies to County Public Roads.

At page 19, Mr. Schulze argues that Skamania County Ordinance applies only to public roads. He cites to SCO 1971-1 §12.21-.22 and argues that Mr. Littlefair “skipped” to section 12.24: this ominous “skipped” Section 12.23 is titled “Street Right of Way Width” and has nothing to detract from Mr. Littlefair somehow allegedly skipping anything relevant. At page 20 of his brief, as Mr. Schulze: “A simple review of the 1971 Ordinance reveals the flaw in Littlefair's argument.”

On page 20, Mr. Schulze says that the table in SCO 1971-1 §12.24 applies only to public roads. This is a leap of faith: SCO 1971-1 §12.22 PRIVATE ROADS contains the following: “Any platted private roads . . . shall conform to the standards and regulations of this ordinance.” A “plain and ordinary” reading gives the conclusion that Gordon Road must comply with such standards and regulations.

What “standards and regulations” of SCO 1971-1? One is readily ascertained is SCO 1971-1 §12.24 COUNTY ROAD DESIGN STANDARDS. It contains the word STANDARDS, which, through the use of a “plain and ordinary” reading, would draw the conclusion that

these are part of the “standards and regulations” which SCO 1971-1 §12.22 speaks of. Mr. Schulze seems to have argued around this (SCO 1971-1 §12.24) in order to reach his desired legal argument. Mr. Schulze is grasping at straws.

The rhetorical arguments that Mr. Schulze offers on page 21 of his brief are nothing more than sophistry: the reason why Gordon Road is not paved with asphalt is probably the same as the reason it is 40 – and not 60 – feet wide: a variance. The 40-foot wide variance has been established in the Appendix. As to why it is not paved: page 1 of the Appendix, letter dated August 2, 1977 by Assistant Engineer Curtis Skaar, in ¶2 addresses construction of Gordon Road to public road standards with a bond to guarantee that it complies so. This paragraph is struck, indicating that the Fosters were not required to pave Gordon Road: another variance.

Mr. Schulze argues that the "Local Access" roads (serving under 250 "Average Daily Traffic" or "ADT"), "Secondary and Collector" roads (serving 250 to 400 ADT) and "Major Arterial" roads (serving 200 to 400 ADT)" designations apply to Public Roads: What logic is that?

SCO 1971-1 §12.25 indicates that these “ADT” standards apply to roads and streets within subdivisions. Mr. Schulze conveniently overlooks that critical connector section, as he so eloquently pointed out

that Mr. Littlefair “skipped” SCO 1971-1 §12.23, which was not even relevant to his or Mr. Littlefair’s argument, other than to malign Mr. Littlefair.

Mr. Schulze’s simplistic view is self-serving and designed to confuse this Court.

XIII. That ordinances from 1981-05 and 1986-02 do not provide standards for road design.

At page 21 footnote 68 of his brief, Mr. Schulze claims that SCO 1981-05 and SCO 1986-02 do not provide for standards for design. A copy of these ordinances would have been helpful. However, 1981 is ten years after the 1971-1 ordinance was passed, and do these ordinances apply to subdivision of five or more lots, as SCO 1971-1 was designed to apply? This argument seems to be another red herring.

XIV. That the utilities easement was not meant to serve as a drainage ditch.

At page 23 of his Response Brief, Mr. Schulze argues:

“Littlefair also argues that the utility easement is designed to include a drainage ditch. This argument is totally without merit. The face of the plat expressly states that the five-foot easement is a P.U.D. easement. "P.U.D.", of course, stands for Public Utility District-it does not

include a drainage ditch. The trial court properly ruled that the fence does not interfere with the utilities already in place.”

Declaration of Conditions and Restrictions (Ex 4) Article XII says:

“Easements for installation and maintenance of utilities and drainage facilities are reserved over the front five (5) feet of each lot.”

Drainage facilities are explicitly identified, and a “plain and obvious meaning” would include a drainage ditch.

XV. That the fence does not interfere with water drainage.

At page 23 of his brief, Mr. Schulze argues:

“But even if the easement includes a drainage ditch, there is sufficient evidence to support Judge Altman's decision that the fence did not interfere with the flow of surface water, or that the south side of the road was not sufficient to meet the drainage problems.”

This argument is without merit, and the Trial Court reached a bad decision:

Mr. Littlefair not only testified about the erosion problems that he is now experiencing because of water drainage issues caused by the fence and Mr. Schulze actions of plowing and scraping, but even provided pictures of the ponds forming in the roadway as a result of the conduct that he complains of. Pictures and testimony was offered and elicited that

Mr. Schulze filled the drainage ditch along the North side of Gordon Road with dirt from the post holes for the fence at issue. RP 57; 168.

XVI. Overruling Thompson v. Smith.

At page 25 of his brief, Mr. Schulze argues that Mr. Littlefair wants this Court to overrule Thompson v. Smith.

That is not at all what Mr. Littlefair wants from this Court. All that Mr. Littlefair wants is to give affect to Thompson, to enforce that law: Thompson involved an unused road with a concrete slab. The case at bar involves an actively used road with a fence placed down its length.

XVII. That Mr. Littlefair wants to enlarge or alter the easement to burden Mr. Schulze's property.

At page 26 of his brief Mr. Schulze argues:

“Moreover, Littlefair's interpretation of the law would have the effect of enlarging or altering the easement in a way that burdens the Schulze's property.”

Mr. Schulze took it upon himself to relocate the fence 13 feet south into Gordon Road, forcing Mr. Littlefair to bring this legal action.

If Mr. Schulze did not relocate the fence then Mr. Littlefair would not have been provoked to stand up for his right to that portion of Gordon Road which Mr. Schulze cut him off of. Plowing snow off Gordon Road, avoiding pot holes, avoiding oncoming traffic, and having peace of mind that emergency vehicles not get stuck in the road, are Mr. Littlefair's concerns.

XVIII. That Mr. Littlefair wants what would contradict the original intentions of the Fosters.

At page 26 of his brief, Mr. Schulze argues:

“Littlefair asks this Court to put limitations on Schulze's use of the easement area while allowing Littlefair unfettered use of the entire 40-foot-wide easement area. This is contrary to Washington law and would constitute an unreasonable interpretation of what the original developer intended when he depicted a private road across the various lots.”

Going to the intentions of the Fosters who are the developers of Foster's Addition, it is obvious after reading the Appendixes in both the Amended Opening Brief and this Reply Brief, that the Fosters intended to follow SCO 1971-1, and that as part of the standards that they intended to adhere to included the intent that Gordon Road would have two lanes of traffic to travel upon a 30 foot wide roadway.

XIX. That the fence is not a nuisance under County law.

Starting at page 27 of his brief, Mr. Schulze argues that his fence is not in violation of SCC 21.32.050(D)(3), which prohibits fences being placed within easements.

First, Mr. Schulze argues that he can make the best use of his land argument under Thompson. That is incorrect because Van Buren prohibits a common grantee from cutting off fellow common grantees from using a common roadway dedication, just like the common grantor is prohibited from doing so.

At page 28 of his brief, Mr. Schulze then argues that Mr. Littlefair is “recycling” his argument for the utilities easement. The evidence clearly indicates that Mr. Schulze filled the drainage ditch with sediment, and now the trial court is prohibiting Mr. Littlefair even access to place those drainage ditches back into that 5-foot wide utilities easement. RP 57; 168. Now, Mr. Littlefair is forced to use that 12-14 foot strip for not only access, but for a drainage ditch, which is necessary in order to maintain a passable roadway to his home and the home of his tenants.

At page 28, Mr. Schulze argues that SCC 21.32.050(D)(3) doesn't apply because "Skamania County is laced with easements that have structures on them".

This finding is not based upon any evidence offered or submitted at trial, includes unknown parties not involved in this legal action, and has no basis to justify the trial court's ruling that the SCC in question does not prohibit Mr. Schulze's fence from being placed in Gordon Road.

On pages 29-30 of his brief, Mr. Schulze offers many "what if" arguments, which he waived on appeal by not calling a county official during trial in order to address SCC 21.32.050(D)(3) head-on. He tries to get around this oversight by making these 11th hour arguments. The "plain and ordinary" reading of SCC 21.32.050(D)(3) prohibits this particular fence in this particular easement. No other easements or fences were before the trial court for consideration. Mr. Schulze should be deemed to have waived this argument on appeal as he failed to challenge SCC 21.32.050(D)(3) on its face or as applied. At RP 194, he simply argued that SCC 21.32.050(D)(3) should not apply to his fence. No more analysis or argument was offered.

XX. That the fence does not violate Article VIII of the Declaration of Conditions and Restrictions.

At page 30 of his brief, Mr. Schulze argues that the trial court “correctly” held that the fence does not create a nuisance.

The trial court by implication did find that to be the case at CP 63 ¶15:

“The Defendants’ log decks on the South side of the roadway do “cow chute” the roadway and inhibit two cars passing and snow plowing in the winter.”

A “cow chute” would normally have two sides which forces the “cows” into a narrow passageway. So what was on the north side of this roadway, the other half of this “cow chute”, to create a “cow chute”? The fence, of course. But for some reason that was not explicitly stated so in the Findings of Fact and Conclusion of Law, CP 60. The “plain and ordinary” reading of the trial court’s order leads to the conclusion that the fence caused this “cow chute”, along with the relocated fence.

This fence also violates Van Buren. When the Schulzes bought their lots, they were aware of the existence of the private roadway, and cannot now complain that they pay taxes for the area which the roadway transverses.

XXI. That maintenance did not create a nuisance.

At page 31 of his brief, Mr. Schulze argues “Ordinary road maintenance for the benefit of the neighborhood is not a nuisance”. The problem is that Mr. Schulze’s maintenance resulted in the roadway crown being removed and Mr. Littlefair’s complaints did not commence until after Mr. Schulze built the fence.

At page 32, Mr. Schulze argues that Mr. Littlefair cannot show damages to the roadway. Mr. Littlefair did provide evidence through the testimony of Mr. Russell on the cost of repairing the roadway as damaged by Mr. Schulze’s “maintenance”, Ex 7.

XXII. Attorney fees and costs.

There are several problems with Mr. Schulz’s request for attorney fees and costs:

A. Schlager v. Bellport, 118 Wash.App. 536, 76 P.3d 778 (I, 2003) presents a date limitations issue.

In Schlager, the contract bearing the attorney fee provision was dated in 1971, and the parties to the action did not purchase their respective lots in that subdivision until 1999 (Schlager) and 2001 (Bellport). Id. at 538.

Since the Declaration of Conditions and Restrictions (Ex 4) was dated August 2, 1977, which was before the September 21, 1977 date as stated in RCW 4.84.330, attorney fees and costs are time barred.

As Schlager held, that date bar is a bar, and since Bellport failed to cite to any other authority, id. at 543, no attorney fees were awarded. Because Mr. Schulze failed to cite to any other authority, then he too should be denied attorney fees and costs.

B. The Declaration of Conditions and Restrictions (Ex 4) do not address the specific stage at which instance a claimant is appealing a court's denial of relief. So does it only apply at the trial court level? This appears to be a drafting oversight and a bar to recover such fees and costs at the appellate level.

C. The Declaration of Conditions and Restrictions (Ex 4) states that only the claimant "shall be entitled to have and recover from defendant or defendants" such fees and costs: it nowhere states that a defending party may recover any fees and costs incurred while successfully defending against claims.

While this appears to be a drafting flaw, it is what Article XVI limits each party to recover during such legal actions.

D. Article XVI fails to provide fees and costs to a successful appellate defendant: So although Mr. Schulze is defending himself in this appeal, if his is successful, then he has no provision to request appellate fees and costs.

E. On the merits, since Mr. Schulze never submitted a “written demand for the discontinuance of a violation” letter upon Mr. Littlefair, then Mr. Schulze has failed to abide by the terms of Article XVI (Ex 4 page 6), thereby waiving such fees and costs.

F. Mr. Schulze lost his counterclaims at the trial level, either through abandonment, or, as specifically noted at CP 64 ¶ 16, denied by the trial court. Mr. Schulze failed to pursue his counterclaims on appeal. At the appellate stage, it appears that only Mr. Littlefair is prosecuting his claims, and Mr. Schulze is only defending.

So even given the fact that Mr. Schulze failed to preserve his attorney fees and costs by having failed to submit a written demand upon Mr. Littlefair before filing counterclaims, Mr. Schulze failed to then appeal the trial court’s decision affecting his own counterclaims.

Mr. Schulze waived his appellate attorney fees and costs by not appealing any decision affecting his grievance of any violation of the covenants and restrictions caused by any alleged act of Mr. Littlefair.

Mr. Schulze should be denied his attorney fees and costs.

XXIII. Conclusion.

Mr. Littlefair prays that this Court concludes that the Fosters did intend that Gordon Road have 2 lanes for traffic travel over a thirty-foot wide portion of the 40-foot wide dedication; that the ditch be re-dug along the 5-foot wide utilities right-of-way along the north side of Gordon Road, that Mr. Schulze is not entitled to attorney fees and costs, and that Mr. Littlefair be awarded his attorney fees and costs for successfully having the trial court force Mr. Schulze to remove the log decks and personal property from Gordon Road, and for attorney fees and costs for this appeal.

Respectfully submitted this 19th day of August, 2011.

A handwritten signature in black ink, appearing to read "George Kolin". The signature is written in a cursive, flowing style.

George A. Kolin, WSBA #22529
Attorney for Appellant

APPENDIX

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Excerpts from the file on Foster's Addition at the Skamania County Community Development Department, paginated at the bottom left-hand corner and identified as follows:

August 2, 1977 (1 page)

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June 30, 1977 (1 page)

Letter from Skamania County Planning Department by Robert P. Lee

June 30, 1977 (1 page)

Skamania County Board of Commissioners minutes (1 page);

June 17, 1977 (1 page)

Letter from Skamania County Planning Department by Glenn Carr

June 7, 1977 (1 page)

Letter from Skamania County Planning Department by Glenn Carr

June 6, 1977 (2 pages)

Letter from Skamania County Engineer by Spencer Garwood

May 27, 1977 (1 page)

Public Notice by the Skamania County Board of Commissioners minutes

May 16, 1977 (1 page)

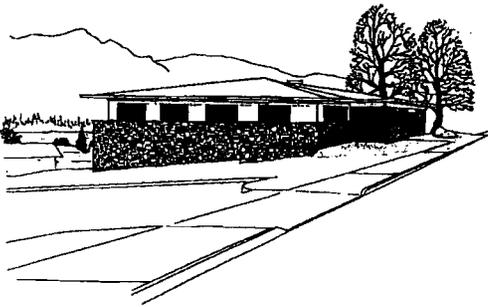
Letter from Tenneson Engineering Corporation by Donald J. Rohde

May 16, 1977 (9 pages)

Environmental Checklist Form by Leonard T. Foster

April 12, 1977 (1 page)

Memorandum from Skamania County Planning Department by Glenn Carr



COURTHOUSE ANNEX

OFFICE OF
SKAMANIA COUNTY ENGINEER

P. O. BOX 411

STEVENSON, WASHINGTON 98648

PHONE 427-5141

August 2, 1977

Bob Lee
Planning Director
Courthouse Annex
Stevenson, Washington 98648

Re: Foster's Addition Final Plat

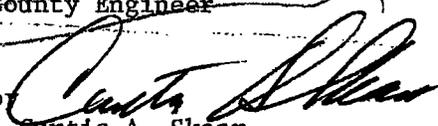
Dear Bob,

This office has reviewed the above plat, our comments are as follows:

- (1) Private road right of way should be sixty feet as shown on the preliminary plat. (Paragraph 12.22).
- (2) Paragraph 12.25 does not differentiate between public and private roads, so presumably the roads should be built on a bond posted to guarantee construction within a reasonable period.
- (3) Road centerline monuments should be set as required (Paragraph 14.40).
- (4) Semi tangent distances are not shown on road centerlines. (Paragraph 16.20 (5)).
- (5) The preliminary plat indicates a natural drainage across lots 12, 13 and 14. This should be shown on the final.
- (6) Easements are shown for the P.U.D. Is this a utility easement for all utilities or an easement for the P.U.D. only? Also, this office prefers to accommodate the utilities within the road right of way. In the event of future road improvements requiring additional right of way, we have fewer encumbrances on land title.

Very truly yours,

James A. Paeth
County Engineer

by 
Curtis A. Skaar
Assistant Engineer



**SKAMANIA
COUNTY
PLANNING
DEPARTMENT**
STEVENSON, WA. 98648
(509) 427-5141

June 30, 1977.

Leonard Foster,
P.O. Box 416,
Stevenson, WA 98648

Dear Leonard,

The Board of County Commissioners have approved your preliminary plat of Foster's Addition on June 30, 1977, with the following conditions:-

1. That the points noted in the Skamania County Engineer's letter of June 29, 1977, be fulfilled.
2. The access easement for lots 1 and 2, be noted as a private access easement.
3. A note is to appear on the final plat, showing the Auditor's File number and recording Book and Page for the Covenants of this plat.

Also, as noted in Section 14.20 Survey Notes of the Subdivision Ordinance, at least two weeks prior to submitting a final plat, the Surveyor shall furnish the County Engineer with sufficient data to substantiate the survey data for your plat.

Sincerely yours,



ROBERT P. LEE
Planning Department

Enc: Skamania County Engineer's Letter
Covenants

BOARD OF COMMISSIONERS

SKAMANIA COUNTY

Stevenson, Washington 98648

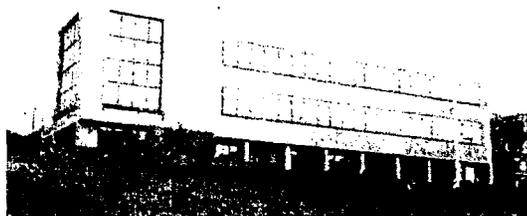
B. E. SCHULZE - District 1

DEAN O. EVANS - District 2

ROBERT E. ROGERS - District 3

GIL TODD - Clerk

June 30, 1977



Robert Lee presented the remaining information on Fosters Addition preliminary plat. Variances as noted on the plat were reviewed as well as all information presented at the June 20 meeting. The preliminary plat was approved subject to the following:

Sustantiation of lot corners as indicated by iron pipes; notation of road designations; variances as noted on the plat map, and covenants that are recorded at the Auditors' Office.

SKAMANIA COUNTY PLANNING DEPARTMENT

STEVENSON, WA. 98648
(509) 427-5141

June 17, 1977.

Skamania County Board of Commissioners.

Gentlemen;

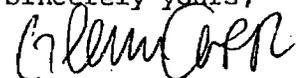
Re: Foster's Addition - Preliminary Plat

In accordance with our county subdivision and platting regulations, I am submitting to you the planning commission report regarding the above noted proposal. This subdivision was discussed at the Planning Commission Meeting of June 7, 1977, and was recommended for approval subject to the following conditions:-

1. That the additions and corrections required by the County Engineer's recommendation of June 6, 1977 are completed.
2. The P.U.D. requirements are satisfied.
3. That the two public roads shown on the preliminary plat be shown as private roads.
4. That the variances for lot widths should be specified on the preliminary plat, together with a statement that the Declaration of Conditions and Restrictions (covenants) for this subdivision are filed in the Auditor's office.
5. The seven members present concurred with the Environmental Checklist and a 'Negative Declaration' with regard to the S.E.P.A.

When Tenneson Engineering completes the work to the actual preliminary plat, and it is reviewed by the County Engineer, and our Department for compliance with the Subdivision Ordinance, it will be presented for your approval.

Sincerely yours,



GLENN CARR
Planning Director

- Enc: 1. Planning Commission Minutes - June 7, 1977.
2. Environmental Checklist
3. Negative Declaration
4. Recommendations (4)

Page 4 5. Declaration of Conditions & Restrictions Covenants.

**SKAMANIA
COUNTY
PLANNING
DEPARTMENT**
STEVENSON, WA. 98648
(509) 427-5141

June 7, 1977.

Skamania County Planning Commission.

Re: Foster's Addition - Preliminary Plat

I have inspected the property and reviewed the preliminary plat of the above captioned subdivision. The general layout of the subdivision conforms to the design standards of our Subdivision Ordinance.

The proposed Plat shows two roads as new public roads, if the subdivider prefers private roads, he should so state or certify. If private roads are to be developed and platted, the Preliminary Plat should be revised to show this.

I recommend that the plat be approved, provided that variances for lot widths are given for those lots specified on the face of the proposed preliminary plat, and further, that a space be provided on the Final Plat for recording that there are on file in the Skamania County Auditor's office, a Declaration of Conditions and Restrictions for this subdivision, and the place (Book and Page number) of filing noted, and further, that these conditions and restrictions are filed at the time of filing the Final Plat.

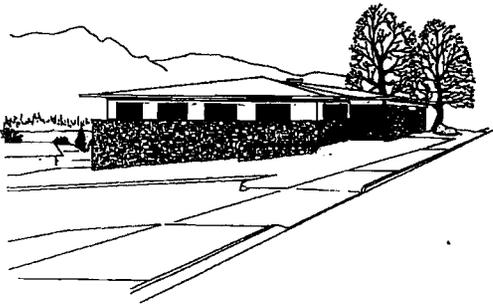
Sincerely yours,



GLENN CARR
Planning Director

NOTE:

The proposed prelim. plat was approved with conditions mentioned in the recommendations by the planning commission on June 7, 1977. (See Minutes) GC



OFFICE OF
SKAMANIA COUNTY ENGINEER

P. O. BOX 411
STEVENSON, WASHINGTON 98648

PHONE 427-5141

June 6, 1977

COURTHOUSE ANNEX

Planning Director
Courthouse Annex
Stevenson, Washington 98648

Subject: Review of copy of Foster Addition Preliminary Plat/Cover Letter from Tenneson, dated May 19, 1977

Dear Glenn,

In view of the subject copy of the preliminary plat, the following recommendations are made; provided these additions and corrections are made to the preliminary plat and no other changes incorporated, the preliminary plat will be approved by this department upon its receipt and timely review.

- (1) The date of the boundary survey has been noted under separate cover letter, however, we note that Tenneson did not do the work. Were the contours developed as a result of the Perkins survey or by additional field work done by Tenneson? If Tenneson did the topog field work, the date should be indicated. (Ref. Paragraph 15.10-4).
- (2) The bearings of several boundary lines are not shown, and should be included on the completed preliminary plat. (Ref. Paragraph 15.10.6).
- (3) The proposed new county roads need suggested names. The necessity of the proposed road in Lots 1 and 2 is questioned. It would appear that direct driveway access would be more reasonable onto the Trout Creek Road. The construction of two private driveways would be far more economical as the gravel cost to the subdivider for the proposed county road will run in excess of 5 dollars per lineal foot alone.
- (4) The roadway drainage system should be shown and it will be sufficient to do so on the road plans and profiles when they are completed. (Ref. 15.10-10-12).
- (5) The contour lines as shown do indicate the thread of Martha Creek and the natural drainage flowing up hill in several locations. As indicated in the cover letter, the thread is mislocated. I assume you have done the field topog work necessary to establish the accuracy of the contours as shown. Please note we require the contours accurate to 5 feet and said accuracy certified by the engineer responsible. (Ref. Paragraph 15.10-3-11).

(2)

- (6) The proposed location of power and telephone should be shown on the proposed roadways. (Ref. Paragraph 15.10-9).
- (7) We call your attention to the Section 14 of the platting ordinance as you are preparing the final plat. This section shows the survey requirements.
- (8) Section 12 of the ordinance will provide the necessary data as you prepare the road plan and profiles.

Please contact this office if there are any questions.

Very truly yours,

James A. Paeth
County Engineer

by 
Spencer Garwood
Road Superintendent

SG/vb

PUBLIC NOTICE

The Skamania County Planning Commission will hold a Regular Meeting on Tuesday, June 7, 1977, at 7:30p.m. in the Courthouse Annex, Stevenson, Washington.

The Planning Commission will consider the preliminary plat of Foster's Addition, a proposed subdivision.

✓ Foster's Addition is located within the SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 26, T.4.N. R.7.E., W.M. along the Trout Creek Road near Stabler, Washington. The proposed subdivision contains 18 lots on 48 acres. The smallest lot is two acres in size.

Information on this proposed subdivision is on file in the County Planning Department and may be examined by interested parties.

For the Skamania County
Planning Commission



GLENN CARR
Planning Director

To be published: May 27, June 3, 1977.

CONSULTING
Engineers TENNESON ENGINEERING CORPORATION

May 16, 1977

PHONE (503) 296-9177
 409 LINCOLN STREET
 THE DALLES, ORE. 97058

Skamania County Planning Commission
 Skamania County Courthouse Annex
 Stevenson, Washington 98648

Attention: Mr. Glen Carr

Reference: Preliminary Plat Foster's Addition

Gentlemen:

We are submitting for your review and approval the preliminary plat of Foster's Addition. We are enclosing eight copies of the preliminary plat with the Environmental Assessment and his covenants for the proposed subdivision.

Also enclosed is a letter dated August 13, 1974 which gives the data of five perk tests performed at that time. The locations are shown on the enclosed plat, for your reference. Mr. Foster I understand, will submit more data as required on the soil log holes.

On the preliminary plat we have requested a variance on the minimum required 200 foot lot width on lots 1, 2, 13, 16 and 17 due to property lines and terrain features. We have shown on the proposed plat 60 foot road rights-of-way. Mr. Foster would request a variance on the width of the road from 60 to a 40 foot private road width with the lot corners going to the center of the proposed 40 foot road. This would allow a 20 foot easement on each side for the proposed private road and utilities.

In October, 1974 we submitted a previous plat for Mr. Foster (which was not filed) along with a check for \$50.00 (\$20.00 plus 15 lots @ \$2.00/lot). We therefore are submitting with this preliminary plat an additional \$6.00 check (3 lots @ \$2.00) for a total of 18 lots.

If there are any questions on any of the submittals or if further data is required, please notify us immediately so this can be made available to you as soon as possible.

Very truly yours,

TENNESON ENGINEERING CORPORATION

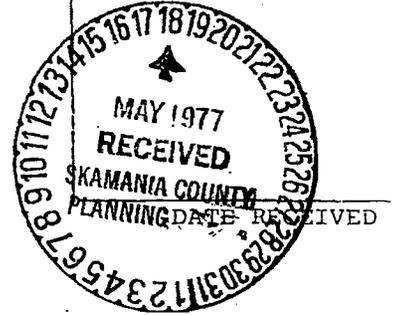
Donald J. Rolde
 Donald J. Rolde, Corp. Secretary

DJR:rlc
 Enclosures

cc: Mr. Leonard Foster



ENVIRONMENTAL CHECKLIST FORM



I. BACKGROUND

1. Name of Proponent: Mr. Leonard J. Foster
2. Address and Phone Number of Proponent:
P. O. Box 416
Stevenson, WA 98648 (509) 427-8014
3. Agency Requiring Checklist: Skamania County Planning Commission
4. Name of Proposal, if applicable:
Foster's Addition
5. Nature and Brief Description of the Proposal (including but not limited to its size, general design elements, and other factors that will give an accurate understanding of its scope and nature):
Subdivide approximately 48 acres into 2-acre tracts for recreational and secondary housing.
6. Location of Proposal (describe the physical setting of the proposal, as well as the extent of the land area affected by any environmental impacts, including any other information needed to give an accurate understanding of the environmental setting of the proposal):
S.E. 1/4, S.W. 1/4, Sec. 26, T. 4 N., R. 7 E., W.M., Skamania County, Washington. The land is now brush covered having been logged over recently with ~~March~~ Creek running across said property.
7. Estimated Date for Completion of the Proposal:
Summer, 1977. **MARTHA**
8. List of all Permits, Licenses or Government Approvals Required for the Proposal (federal, state and local):
Skamania County Sanitarian (septic tank); Skamania County Planning Commission (subdivision); Skamania County Road Dept.; Department of Natural Resources (fire protection).
9. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain:

No
10. Do you know of any plans by others which may affect the property covered by your proposal? If yes, explain:

No
11. Attach any other application form that has been completed regarding the proposal; if none has been completed, but is expected to be filed at some future date, describe the nature of such application form:

II. ENVIRONMENTAL IMPACTS

(Explanations of all "yes" and "maybe" answers are required)

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
(1) <u>Earth</u> . Will the proposal result in:			
(a) Unstable earth conditions or in changes in geologic substructures?	___	___	<u>X</u>
(b) Disruptions, displacements, compaction or overcovering of the soil?	___	___	<u>X</u>
(c) Change in topography or ground surface relief features?	___	___	<u>X</u>
(d) The destruction, covering or modification of any unique geologic or physical features?	___	___	<u>X</u>
(e) Any increase in wind or water erosion of soils, either on or off the site?	___	___	<u>X</u>
(f) Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	___	___	<u>X</u>
<u>Explanation:</u> _____			

(2) <u>Air</u> . Will the proposal result in:			
(a) Air emissions or deterioration of ambient air quality?	___	___	<u>X</u>
(b) The creation of objectionable odors?	___	___	<u>X</u>
(c) Alteration of air movement, moisture or temperature, or any change in climate, either locally or regionally?	___	___	<u>X</u>
<u>Explanation:</u> _____			

Yes Maybe No

(3) Water. Will the proposal result in:

- | | | | |
|---|------------|-------|----------|
| (a) Changes in currents, or the course or direction of water movements, in either marine or fresh waters? | _____ | _____ | <u>X</u> |
| (b) Changes in absorption rates, drainage patterns, or the rate and amount of surface water runoff? | <u>X</u> * | _____ | _____ |
| (c) Alterations to the course or flow of flood waters? | _____ | _____ | <u>X</u> |
| (d) Change in the amount of surface water in any water body? | <u>X</u> * | _____ | _____ |
| (e) Discharge into surface waters, or in any alteration of surface water quality, including but not limited to temperature, dissolved oxygen or turbidity? | <u>X</u> * | _____ | _____ |
| (f) Alteration of the direction or rate of flow of ground waters? | _____ | _____ | <u>X</u> |
| (g) Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations? | <u>X</u> * | _____ | _____ |
| (h) Deterioration in ground water quality, either through direct injection, or through the seepage of leachate, phosphates, detergents, waterborne virus or bacteria, or other substances into the ground waters? | <u>X</u> * | _____ | _____ |
| (i) Reduction in the amount of water otherwise available for public water supplies? | _____ | _____ | <u>X</u> |

Explanation: _____

(4) Flora. Will the proposal result in:

- | | | | |
|--|------------|-------|----------|
| (a) Change in the diversity of species, or numbers of any species of flora (including trees, shrubs, grass, crops, microflora and aquatic plants)? | <u>X</u> * | _____ | _____ |
| (b) Reduction of the numbers of any unique, rare or endangered species of flora? | _____ | _____ | <u>X</u> |

*SEE ADD'N INFORMATION ATTACHED

Yes Maybe No

(c) Introduction of new species of flora into an area, or in a barrier to the normal replenishment of existing species? X

(d) Reduction in acreage of any agricultural crop? X

Explanation: _____

(5) Fauna. Will the proposal result in:

(a) Changes in the diversity of species, or numbers of any species of fauna (birds, land animals including reptiles, fish and shellfish, benthic organisms, insects or microfauna)? X *

(b) Reduction of the numbers of any unique, rare or endangered species of fauna? X

(c) Introduction of new species of fauna into an area, or result in a barrier to the migration or movement of fauna? X

(d) Deterioration to existing fish or wildlife habitat? X

Explanation: _____

(6) Noise. Will the proposal increase existing noise levels? X *

Explanation: _____

(7) Light and Glare. Will the proposal produce new light or glare? X *

Explanation: _____

(8) Land Use. Will the proposal result in the alteration of the present or planned land use of an area? X

Explanation: _____

*SEE ADD'N INFORMATION ATTACHED

- | | <u>Yes</u> | <u>Maybe</u> | <u>No</u> |
|--|------------|--------------|-----------|
| (9) <u>Natural Resources.</u> Will the proposal result in: | | | |
| (a) Increase in the rate of use of any natural resources? | ___ | ___ | <u>X</u> |
| (b) Depletion of any nonrenewable natural resource? | ___ | ___ | <u>X</u> |
| Explanation: _____ | | | |
| (10) <u>Risk of Upset.</u> Does the proposal involve a risk of an explosion or the release of hazardous substances (including, but not limited to, oil, pesticides, chemicals or radiation) in the event of an accident or upset conditions? | ___ | ___ | <u>X</u> |
| Explanation: _____ | | | |
| (11) <u>Population.</u> Will the proposal alter the location, distribution, density, or growth rate of the human population of an area? | <u>X</u> * | ___ | ___ |
| Explanation: _____ | | | |
| (12) <u>Housing.</u> Will the proposal affect existing housing, or create a demand for additional housing? | ___ | ___ | <u>X</u> |
| Explanation: _____ | | | |
| (13) <u>Transportation/Circulation.</u> Will the proposal result in: | | | |
| (a) Generation of additional vehicular movement? | <u>X</u> * | ___ | ___ |
| (b) Effects on existing parking facilities, or demand for new parking? | ___ | ___ | <u>X</u> |
| (c) Impact upon existing transportation systems? | <u>X</u> * | ___ | ___ |
| (d) Alterations to present patterns of circulation or movement of people and/or goods? | ___ | ___ | <u>X</u> |
| (e) Alterations to waterborne, rail or air traffic? | ___ | ___ | <u>X</u> |

* SEE ADD'N INFORMATION ATTACHED

(f) Increase in traffic hazards to motor vehicles, bicyclists or pedestrians? _____ X _____

Explanation: _____

(14) Public Services. Will the proposal have an effect upon, or result in a need for new or altered governmental services in any of the following areas:

- | | | | |
|--|------------|-------|----------|
| (a) Fire protection? | <u>X</u> * | _____ | _____ |
| (b) Police protection? | <u>X</u> * | _____ | _____ |
| (c) Schools? | <u>X</u> * | _____ | _____ |
| (d) Parks or other recreational facilities? | _____ | _____ | <u>X</u> |
| (e) Maintenance of public facilities, including roads? | _____ | _____ | <u>X</u> |
| (f) Other governmental services? | _____ | _____ | <u>X</u> |

Explanation: _____

(15) Energy. Will the proposal result in:

- | | | | |
|--|-------|-------|----------|
| (a) Use of substantial amounts of fuel or energy? | _____ | _____ | <u>X</u> |
| (b) Demand upon existing sources of energy, or require the development of new sources of energy? | _____ | _____ | <u>X</u> |

Explanation: _____

(16) Utilities. Will the proposal result in a need for new systems, or alterations to the following utilities:

- | | | | |
|-------------------------------|------------|-------|----------|
| (a) Power or natural gas? | _____ | _____ | <u>X</u> |
| (b) Communications systems? | _____ | _____ | <u>X</u> |
| (c) Water? | <u>X</u> * | _____ | _____ |
| (d) Sewer or septic tanks? | <u>X</u> * | _____ | _____ |
| (e) Storm water drainage? | <u>X</u> * | _____ | _____ |
| (f) Solid waste and disposal? | _____ | _____ | <u>X</u> |

Explanation: _____

* SEE ADD'N INFORMATION ATTACHED

Yes Maybe No

- (17) Human Health. Will the proposal result in the creation of any health hazard or potential health hazard (excluding mental health)? X

Explanation: _____

- (18) Aesthetics. Will the proposal result in the obstruction of any scenic vista or view open to the public, or will the proposal result in the creation of an aesthetically offensive site open to public view? X

Explanation: _____

- (19) Recreation. Will the proposal result in an impact upon the quality or quantity of existing recreational opportunities? X

Explanation: _____

- (20) Archeological/Historical. Will the proposal result in an alteration of a significant archeological or historical site, structure, object or building? X

Explanation: _____

III. SIGNATURE

I, the undersigned, state that to the best of my knowledge the above information is true and complete. It is understood that the lead agency may withdraw any declaration of non-significance that it might issue in reliance upon this checklist should there be any willful misrepresentation or willful lack of full disclosure on my part.

Proponent: _____

Leonard L. Hosto

II. Environmental Impacts

3. (b) The drainage rate and drainage pattern will be changed due to access roads to each lot and the additional runoff from each building on each lot. This amount will be small due to the large tracts of land. The maximum amount of lot will be 18.
3. (d) The surface water will be increased due to the runoff from the roof of each home. The drainage will follow the natural drainage pattern and flow into Martha & Trout Creek. It is not anticipated this will have any effect on water pollution on either of these streams.
3. (e) The runoff will drain toward Martha and Trout Creek as now exists, therefore we do not anticipate any additional alteration of surface water quality.
3. (g) Construction of individual wells will result in use of natural sub-terranean water. The usage is not anticipated to be a significant factor in the regional ground water table due to the anticipated small usage.
3. (h) It is proposed that the sewage disposal will be through use of individual septic tanks and drainfields. Such construction will be in conformance with Health District requirements.
4. (a) Some vegetation will be disturbed where housing and roads are constructed, and more intensive use of the project area.
5. (a) The increase in population density may have a detrimental effect on existing wildlife use of the area due to the essential non-compatibility between the two species.
6. The construction of the homes and roads and the use thereof is not anticipated to provide any appreciable noise pollution in the surrounding area and the home building operation to be short term in duration and normally acceptable practice. The increase in traffic should be light due to the small number of available tracts of land.
7. The only light that will be produced in this project will be light in and around each home that might or will be built.
11. It is not anticipated that any permanent population increase in this area will result because of this subdivision. The nature and purpose of these tracts to be used as recreational home sites, meaning secondary housing rather than permanent

ADDITIONAL INFORMATION
Proposed Foster's Addition

Environmental Checklist Form

housing. The maximum number of temporary increase would result by occupancy of all lots at the same time representing
18 lots for a total population of 54 people using an average of 3 people per household. 54

13. (a & b) The existing access to the proposed project is via paved County Road No. 2140 maintained by the County and is adequate for any increase in vehicular traffic produced by this proposed project.
14. (a & b) This subdivision will create new homes that will need fire and police protection, but there are already homes in the adjacent area, therefore this subdivision is not opening up a new area that needs this type of protection.
14. (c) The present school district is Stevenson-Carson No. 303. This subdivision used as recreational and secondary housing does not anticipate providing increased load on schools as most people with children would return to their permanent housing during school term.
16. (c) Water will be obtained from individual wells.
16. (d) Sewage disposal will be through the use of individual septic tanks and drainfields on each site.
16. (e) Storm water drainage will continue to follow the same existing drainage pattern as now. The site drains toward Martha Creek, a tributary of Trout Creek.

FOSTERS ADD
1977

April 12, 1977.

MEMORANDUM

TO: PLANNING COMMISSION MEMBERS AND OTHER INTERESTED PARTIES
FROM: GLENN CARR, PLANNING DIRECTOR
SUBJECT: PROPOSED REVISION OF APPROVED PRELIMINARY AND NEW SUBDIVISION

A preliminary conference was held at 2:30p.m. April 11, 1977 in Room E 18 of the County Courthouse Annex.

Present: Leonard Foster, Bob Lee, Raymond Curry, Tom Reinhardt, Spencer Garwood and Glenn Carr.

Carr commented on the previously approved subdivision of Foster's Addition. No water system has been installed and Mr. Foster has decided to propose this new subdivision involving more of his land. This new proposal is for large lots with a minimum size of two acres. (No water system is required under our subdivision ordinance for subdivisions with this minimum lot size).

Garwood wanted clarification on the exact location of electrical lines in the Foster Road. Are the lines in the R/W? It was suggested that Foster submit the preliminary plat with 60' R/W shown and request a variance for narrower roads as he desires.

The preliminary plat is to show roadway and surface drainage. Both new proposed roads should have cul-de-sacs if they are intended to be public. Foster will consider going to private roads. Check angle at intersection between lots No 16 and 13.

Curry recommended that cul-de-sacs be placed at the end of both new roads for Fire Protection equipment (45' diameter). Curry said that a 40' wide roadway would be acceptable for the Forest Service.

Curt Skaar dropped in on the conference and indicated that there have been other surveys of property in this area which show slightly different dimensions. Carr said that the dimensions as shown would be sufficient for preliminary purposes and that any discrepancies should be worked out before a final plat is submitted.

Reinhardt wants the subdivider to dig one test hole for each lot in the area not previously approved, i.e. lots 3, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16.

Carr said all lots should be 200' minimum dimension for width as specified in our ordinance. Lots should be changed before submission as a preliminary plat, or a variance requested for each lot below the minimum dimensions. Variances should be requested on the face of the plat for any lots not meeting the minimums, giving the reason for this request, such as lot No. 15.

Bill Yee, PUD Manager, was not present at this conference, but sent a note suggesting that electrical power should be provided to each lot prior to sales.

COURT OF APPEALS
STATE OF WASHINGTON
CLERK OF COURT
BY _____
DEPUTY

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

PETER T. LITTLEFAIR,
Appellant,

v.

DAVID M. SCHULZE, ET UX, ET AL,
Respondent.

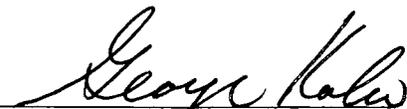
No. 41448-1-II

CERTIFICATE OF SERVICE

I certify that a copy of the Reply Brief was served upon the Respondent by placing said copy into a sealed envelope and depositing said envelope into the United States Postal Service, postage pre-paid first class and addressed to:

Bradley W. Andersen
Schwabe, Williamson & Wyatt
700 Washington St., Ste. 701
Vancouver, WA 98660

Done and Dated August 19, 2011.


George A. Kohn, Affiant Herein