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No. 96360-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KING COUNTY,

Appellant,

v.

KING COUNTY WATER DISTRICTS
Nos. 20, 45, 49, 90, 111, 119, 125, et al.,

Respondents.

AMES LAKE WATER ASSOCIATION, DOCKTON WATER
ASSOCIATION, FOOTHILLS WATER ASSOCIATION, SALLAL
WATER ASSOCIATION, TANNER ELECTRIC COOPERATIVE,
and UNION HILL WATER ASSOCIATION,

Intervenor-Respondents.

**KING COUNTY'S RESPONSE TO BRIEFS OF *AMICUS CURIAE*
WASHINGTON RURAL ELECTRIC COOPERATIVE
ASSOCIATION, RENTAL HOUSING ASSOCIATION OF
WASHINGTON, & SHAWNEE WATER ASSOCIATION**

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I. INTRODUCTION

Amici Curiae Washington Rural Electric Cooperative Association (“WRECA”), Rental Housing Association of Washington (“RHAW”), and Shawnee Water Association (“SWA”) (collectively, “Amici”) largely recycle legal arguments previously raised that King County already refuted in its briefing. These arguments, which primarily claim that the County lacks a sufficient ownership interest in the ROW and that franchise rental compensation is actually a tax, are no more successful the second time around. The County’s authority to charge rental compensation, grounded in over 100 years of this Court’s precedent, is not dependent on the specific real property interest the County holds. Similarly, as addressed in detail in the County’s reply brief, rental compensation is not a tax, and this Court has previously so held (as have other courts). Finally, Amici suggest that they may hold unique property interests in the ROW they utilize, rendering compensation inappropriate *as applied* to them. Even in the highly limited circumstances where this may be true, it does not affect resolution of this case, because Respondents’ arguments are a facial attack against the County’s authority to adopt the Ordinance. Should this Court uphold the County’s authority, the rental amount each utility owes would vary on a case-by-case basis depending on the value of the ROW, any special easements that an individual utility

might claim to hold, and the give and take of negotiations. This Court should reverse and uphold the Ordinance as facially valid.

II. ARGUMENT

A. The County Has Authority to Charge Rental Compensation.

WRECA begins with a “historical” summary suggesting that local governments have sought to profit from utilities in public ROW. This summary is devoid of any citation, and understandably so, since the actual historical record shows the opposite. As detailed in the County’s opening brief, starting in the 19th Century utilities sought to profit expansively from free, wide-open use of public ROW. The franchise power became the means for local governments to both maintain control over the ROW and receive fair value for use of a public asset. Opening Br. at 21-31. Several specific provisions of the Washington Constitution address these exact concerns. The use of rental compensation as inherent in the franchise power is part and parcel of this history, and has been repeatedly validated by this Court. Particularly in this context, Amici’s arguments against paying compensation, especially as applied to private parties, ring hollow.

1. The County’s Interest in the ROW Is Sufficient to Charge Rent for Its Use.

Without analysis or citation to Washington authority, WRECA and RHAW attack the Ordinance on the grounds that the County lacks a “proprietary” or “ownership” interest in the ROW and therefore cannot charge rental compensation for its use. They are incorrect. Long ago, this Court pointed out that the property mechanism used to acquire a road did not matter—whether by “prescription, dedication, user, or legal establishment by the county commissioners”—because “the existence of a public highway may be established by any competent evidence, and there is no distinction in the validity of either method of the establishment of a public highway in this state.” *State v. Horlacher*, 16 Wash. 325, 326-27, 47 P. 748 (1897). In the end, “whatever the nature of the interest may be, it is held in trust for the public” for both the primary purpose of public travel and secondary uses like utility lines. *State ex rel. York v. Bd. of Comm’rs of Walla Walla Cty.*, 28 Wn.2d 891, 898, 184 P.2d 577 (1947).

The “essential principle” with regard to road ROWs is “that the legislature, within constitutional limitations, has absolute control over the highways of the state, both rural and urban.”¹ *Id.* The Legislature has “in

¹ This absolute control created through initial establishment of the road precludes compensation even to adjacent landowners, who may have a reversionary interest in the underlying fee. *York*, 28 Wn.2d at 906.

practice, traditionally delegated the exercise of this control to counties and municipal corporations.” *Id.* A primary expression of the “absolute control” granted to counties is the franchise statute. *Id.* at 898-99. This statute vests counties with “discretion to grant or withhold franchises as the public interest may determine” and the courts “have no jurisdiction to interfere with the honest exercise of that discretion, so long as those agencies act within the terms of the powers delegated to them.” *Id.* at 901.

Thus, Amici’s argument that the County must own the ROW in fee before it may charge rent makes no sense. The absolute control delegated to counties via the franchise statute not only equates to fee ownership, but also confers sufficient authority upon counties to ensure that the public benefits from a utility’s use of the ROW for business purposes—i.e., authority to charge compensation. Amici’s analogies to property concepts like private easements do not change the nature of the County’s control over its “county roads.”²

² When analyzing property rights, this Court has analogized public road easements to railroad easements. See *Lawson v. State*, 107 Wn.2d 444, 449, 730 P.2d 1308 (1986); *Roeder Co. v. Burlington N., Inc.*, 105 Wn.2d 567, 576, 716 P.2d 855 (1986); see also *Wash. Sec. & Inv. Corp. v. Horse Heaven Heights, Inc.*, 132 Wn. App. 188, 194, 130 P.3d 880 (2006). A railroad easement establishes “exclusive use, possession, and control of the land, and the owner of the fee has no right to use, occupy, or interfere with the same in any manner whatever.” *N. Pac. Ry. Co. v. Tacoma Junk Co.*, 138 Wash. 1, 6, 244 P. 117 (1926) (quotations omitted). A railroad easement “is a very substantial thing, more than a mere right of passage and more than an ordinary easement.” *Hanson Indus., Inc. v. Cty. of Spokane*, 114 Wn. App. 523, 528, 58 P.3d 910 (2002). “It is an easement with the substantiality of a fee and the attributes of a fee, perpetuity and exclusive use and possession; also the remedies of a fee.” *Id.* Thus, whether roads or railroads, the

Given that the County’s authority arises from its **control** of the ROW, not from the nature of its ownership interest, the ability to require reasonable rental compensation for secondary utility uses necessarily follows.³ See Reply Br. at 8-10. The capacity in which the County holds property has no bearing on its ability to charge rental compensation as a condition of a franchise. See *Pac. Tel. & Tel. Co. v. City of Everett*, 97 Wash. 259, 268, 166 P. 650 (1917) (a municipality can impose terms to use property regardless of “**whether the property the use of which is granted be held by it in its government or private capacity**” (emphasis added)). Regardless of the ownership interest the County holds in the ROW itself, “[t]he franchise agreement grants a **valuable** property right to the grantee to use the public streets.” *City of Tacoma v. City of Bonney Lake*, 173 Wn.2d 584, 590, 269 P.3d 1017 (2012) (emphasis added). Indeed, Amici argue on the one hand that local governments have never held ROW interests in fee, but on the other hand fail to address the long line of authority from the Court authorizing rental compensation for that same ROW. Compare WRECA Br. at 7 & RHAW Br. at 2-3, with Opening Br. at 1, 8-9, 24-26, 28-31.

“easement” constituting the ROW is more in the nature of a fee with limited reversionary interests sometimes held by adjacent property owners. *Horse Heaven Heights*, 132 Wn. App. at 196 (confirming adjacent owners hold only a “possibility of reverter”).

³ WRECA goes so far as to claim that the County cannot even charge rent for ROW that it owns in fee. No authority supports this claim.

Nor does the County's status as trustee of the ROW preclude reasonable compensation as a condition of a franchise. WRECA cites no Washington authority for this claim and ignores the numerous cases cited in the County's briefing that squarely uphold municipal authority to assess reasonable conditions in franchise agreements, including compensation. Opening Br. at 21-31; Reply Br. at 3-16. If anything, the County's status as trustee of the ROW further *supports* the imposition of reasonable rental charges on secondary users to protect the public's interest. *See Erie Telecomms., Inc. v. City of Erie*, 659 F. Supp. 580, 595 (W.D. Pa. 1987) (allowing free use of ROW would amount to a "dereliction of [the] city's fiduciary duty to grant franchise rights").

WRECA's heavy reliance on a Civil War era decision from New York, *People v. Kerr*, 27 N.Y. 188 (1863), is misplaced—both in time and jurisdiction.⁴ In that case, the New York legislature had authorized a corporation to build a railroad on city streets. *Id.* at 189-90. Abutting property owners sued, claiming the railway constituted a taking. *Id.* at 190-91. Rejecting the abutting owners' potential reversionary interest in the city streets as "too remote and contingent to be of any appreciable value," the court upheld the railway act. *Id.* at 211. As to the city, which

⁴ Amici suggest "Old Law is Good Law." While that may be true in some instances, established Washington law will always prevail over the "old law" of another state.

had assented to the railway, the court held that whatever interest the city held in the public streets was in trust for the public, and was therefore insufficient to defeat the legislature’s regulation of the streets through the railway act. *Id.* at 212-15. Thus, *Kerr* held that the city could not act in a manner contrary to an express act of the legislature.

In contrast, the Washington Legislature has expressly authorized the County to exercise the state’s “absolute control” over the ROW. *York*, 28 Wn.2d at 898; *see also* RCW 36.55.010 (counties have sole authority to enter into franchises providing for utility use of ROW); RCW 36.75.040(5) (counties have sole authority to rent or lease ROW for non-utility purposes).⁵ The Legislature has not limited the County’s authority to do so—including its ability to charge rent in conjunction with granting a franchise. The fact that this statute has not been amended, even more than a century after Washington courts determined that franchise statutes allow for reasonable rental compensation by a municipality, is by itself sufficient reason to reject Amici’s arguments. *Buchanan v. Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers*, 94 Wn.2d 508, 511, 617 P.2d 1004 (1980).

⁵ WRECA’s citation to RCW 47.44.020(1)’s limitations on the state and RCW 35.21.860’s limitations on cities only underscores the lack of restrictions on the County.

In sum, the County's interest in the ROW is sufficient to require compensation in connection with a franchise agreement. Amici's arguments to the contrary should be rejected.

2. The County's Charter Status Provides Further Independent Support for the Ordinance.

RHAW also fails to undermine the County's charter authority as an *independent basis* on which to uphold the Ordinance. *See* Opening Br. at 45-48. All counties (charter and non-charter alike) possess the discretionary power to grant franchises under RCW 36.55.010, which necessarily includes the power to require consideration. *See* Opening Br. at 21-31. The County's constitutional charter authority merely provides additional, independent authority for the Ordinance, on top of its statutory and historical powers to control ROW use. *See id.* at 45-48.

As a home rule charter county, the County need not identify express legislative sanction for its actions; rather, the question is whether the Ordinance is expressly prohibited. *See Sw. Wash. Chapter, Nat'l Elec. Contractors Ass'n v. Pierce Cty.*, 100 Wn.2d 109, 123, 667 P.2d 1092 (1983). RHAW points to no statute that clearly and expressly prohibits the Ordinance, nor is there one. The exercise of charter authority is particularly appropriate because the management of County roads is a local concern. *See State v. City of Spokane*, 24 Wash. 53, 59-62, 63 P.

1116 (1901); *State ex rel. Schroeder v. Super. Ct. of Adams Cty.*, 29 Wash. 1, 6, 69 P. 366 (1902). The authorities RHAW cites do not hold otherwise.⁶ There is no conflict with state law, or an equivalent preemption of the field by the Legislature.

Even if express delegation were required (which it is not), the power to condition franchise agreements on reasonable terms such as the payment of rental compensation is expressly part of RCW 36.55.010 by judicial interpretation and practice. Only the County has the discretionary power to enter into franchise agreements with respect to County ROW. RCW 36.55.010. This Court has repeatedly held that franchises are contracts, for which consideration is always required. *City of Bonney Lake*, 173 Wn.2d at 590. Based on the understanding of franchise authority dating back to statehood, the discretionary power to grant franchises under RCW 36.55.010 has always encompassed the power to deny or to condition such grant on payment of consideration—whether that consideration takes the form of rent, in-kind services, or other things

⁶ In *Massie v. Brown*, 84 Wn.2d 490, 493, 527 P.2d 476 (1974), this Court held that only the State had the power to create traffic courts, and therefore cities could not do so. Unlike in *Massie*, here only counties are empowered to grant franchises over county ROW. In *Entm't Indus. Coal. v. Tacoma-Pierce Cty. Health Dep't*, 153 Wn.2d 657, 663-64, 105 P.3d 985 (2005), the Court held that a health board resolution banning smoking in all public establishments conflicted with state statutes allowing business owners to designate smoking areas. Likewise, in *Wilson v. City of Seattle*, 122 Wn.2d 814, 823, 863 P.2d 1336 (1993), the Court held that a city's tort claim-filing requirement conflicted with a state statute regarding non-tort causes of action. Here, Respondents and Amici have failed to identify any such conflict.

of value. *See* 4 EUGENE MCQUILLIN, A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 1613, at 3356 (1st ed. 1911) (“[I]nstead of giving away franchises without consideration, the tendency is to protect fully the interests of the municipality, both for the present and the future.”). Payment of rent for the use of ROW constitutes consideration for valuable property rights and RHAW offers no argument to the contrary. *See, e.g., Crawford v. Seattle, R. & S. Ry. Co.*, 97 Wash. 70, 74-76, 165 P. 1070 (1917) (treating franchise payment as consideration).

3. Amici Cannot Overcome Relevant Case Authority Authorizing Rental Charges for ROW Use.

This case is directly controlled by this Court’s century of precedent recognizing municipal authority to impose the types of charges at issue here. Amici’s attempts to distinguish and discredit that precedent fail. First, the fact that *City of Spokane v. Spokane Gas & Fuel Co.*, 175 Wash. 103, 26 P.2d 1034 (1933), and *City of St. Louis v. W. Union Tel. Co.*, 148 U.S. 92, 13 S. Ct. 485, 37 L. Ed. 380 (1893) (“*St. Louis I*”), involved cities rather than counties is not pertinent. Given the equivalence between city and county franchise powers in the early 1900s, RHAW’s attempted distinction is baseless. *See* Opening Br. at 32-33; Reply Br. at 14-15.

This Court’s analysis in *City of Spokane* applies equally to counties.⁷ See 1977 Op. Att’y Gen. No. 19, 1977 WL 25965, at *1, *3; see also 1970 Op. King Cty. Pros. Att’y No. 29 at 2-3; 1935 Op. King Cty. Pros. Att’y No. 59 at 7-9.

Second, Amici’s attempt to discredit the U.S. Supreme Court’s decision in *St. Louis I*—as well as this Court’s precedent relying on the same—is without basis. See WRECA Br. at 16-18; RHAW Br. at 10 & n.8 Amici incorrectly claim that the U.S. Supreme Court retreated from its rental analysis in a subsequent decision denying a petition for rehearing in *St. Louis I*. See *City of St. Louis v. W. Union Tel. Co.*, 149 U.S. 465, 13 S. Ct. 990, 37 L. Ed. 810 (1893) (“*St. Louis II*”).

St. Louis II did not “retreat” from the rental analysis set forth in *St. Louis I* or limit the city at issue to mere “regulatory fees.” In denying a petition for rehearing with respect to the city’s control over its streets, the *St. Louis II* Court found “***no reason to change the views expressed*** as to the ***power*** of the city of St. Louis in this matter,” which the Court described in terms of both “regulation” and “control.” See *id.* at 467, 469-70, 472 (emphasis added). The Court described the charge at issue as “consideration for the use” of ROW and in no way limited the charge to

⁷ Further, contrary to WRECA’s claim, the fact that *City of Spokane* did not discuss whether Spokane had a “proprietary interest” in the streets does not make the case inapplicable here. See *supra*, Section II(A)(1) (proprietary interest not required).

the cost of regulation. *Id.* at 472.⁸ The Court continues to cite approvingly to *St. Louis I* and the core principle that a local government may obtain “reasonable compensation for a telegraph company’s placement of telegraph poles on the city’s public streets.” *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 428, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982) (citing *St. Louis I*, 148 U.S. at 98-99).

Regardless, *St. Louis I* is the law in Washington. This Court—in decisions post-dating both *St. Louis I* and *St. Louis II*—has consistently and exclusively adopted *St. Louis I*’s rental analysis in recognizing the right of municipalities to condition the grant of a franchise on payment of compensation, and has never held otherwise. *See City of Spokane*, 175 Wash. at 108; *City of Everett*, 97 Wash. at 267-68; *Burns v. City of Seattle*, 161 Wn.2d 129, 144, 164 P.3d 475 (2007).

Finally, WRECA fails to undermine this Court’s decisions expressly upholding charges by municipalities that exceed the administrative costs associated with the issuance of a franchise. *See, e.g., Burns*, 161 Wn.2d at 144 (franchise is a “privilege for which cities, historically, have exacted compensation in the form of free services or a

⁸ Confirming this interpretation, and consistent with this Court’s approach in *City of Spokane*, *City of Everett*, and *Burns*, courts in other jurisdictions post-1893 applied *St. Louis I*’s rental analysis and declined to interpret *St. Louis II* as retreating from that analysis. *See, e.g., City of Pensacola v. S. Bell Tel. Co.*, 49 Fla. 161, 170-71, 37 So. 820 (1905); *City of Memphis v. Postal Tel. & Cable Co.*, 164 F. 600, 602-03 (6th Cir. 1908).

cash payment”); *City of Bonney Lake*, 173 Wn.2d at 591-92 (upholding agreement to trade franchise rights for water system); *City of Spokane v. Spokane Gas & Fuel Co.*, 182 Wash. 475, 484-85, 47 P.2d 671 (1935) (authorizing city’s charge for utility’s use of city streets based on percentage of gross receipts). To the extent any of WRECA’s cited authorities⁹ can be interpreted to limit county franchise charges to regulatory costs, they would conflict with this Court’s precedents and should be rejected. *See* Reply Br. at 53-55 (discussing *Lakewood*); Section II(A)(1), *supra* (discussing *Kerr*).¹⁰

4. The Highway Act Does Not Limit the County’s Authority to Charge Rental Compensation as a Condition of Franchise Agreements.

The County has ample authority under both RCW 36.55.010 and its home rule powers to require franchises for secondary use of the ROW and charge rent in conjunction with the same. Opening Br. at 21-34, 45-

⁹ *See* WRECA Br. at 18-19 (citing *Kerr*; *City of Lakewood v. Pierce Cty.*, 106 Wn. App. 63, 23 P.3d 1 (2001); and *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 9088 (Sept. 27, 2018), *appeal docketed*, No. 19-70136 (9th Cir. Jan. 14, 2019)).

¹⁰ Ignoring the century of directly applicable case law cited by the County, RHAW instead relies on inapplicable out-of-state cases that do not undermine the County’s well-established authority. *See City of Hawarden v. US W. Commc’ns*, 590 N.W.2d 504, 508 (Iowa 1999) (ROW use fee conflicted with specific state and federal telecommunications statutory scheme “distinctly different” than the statutory schemes governing utilities outside the telecommunications context); *Montana-Dakota Utils. Co. v. City of Billings*, 318 Mont. 407, 417, 80 P.3d 1247 (2003) (invalidating under state statute precluding local governmental taxes a gross annual revenue franchise fee and rejecting city’s “rental” claim in part because, unlike in the present case, the gross revenue fee was not tied to a utility’s use or occupancy of the public ROW).

48; Reply Br. at 3-22. RHAW summarily claims that the 1937 State Aid Highway Act (“Highway Act”) limited the County’s franchise power, but cites no relevant authority for this argument.¹¹ Accordingly, this Court should decline to consider it. *See State v. Hoffman*, 116 Wn.2d 51, 71, 804 P.2d 577 (1991).

Regardless, RHAW’s argument fails. County franchise authority was codified in 1905 but existed even prior to that time. *See* Laws of 1905, ch. 106, §§ 1-3 (granting franchise authority and validating existing county franchises). It was then well understood that municipalities had discretion to condition the grant of a franchise on the utility’s acceptance of reasonable terms and conditions, including fair compensation for use of

¹¹ The few authorities cited are not on point. For example, RHAW cites authorities addressing (1) the extent of legislative power over the streets and highways in the state, (2) the sovereign nature of the power to grant franchises, and (3) whether utility services serve the public interest. *See* RHAW Br. at 3 n.3, 5 n.5-6. These authorities are irrelevant to the question whether the Highway Act limits county franchise authority as historically recognized and understood in Washington. Moreover, RHAW fails to acknowledge that in Washington, the Legislature has delegated both control over county roads and the franchise power to counties. *See York*, 28 Wn.2d at 898; RCW 36.55.010. RHAW also inexplicably misquotes the Highway Act, failing to include subsection (5) of RCW 36.75.040 which explicitly authorizes the County to rent the ROW:

In its discretion [the County has the power to] rent or lease any lands, improvements or air space above or below any county road or unused county roads to any person or entity, public or private: PROVIDED, That the said renting or leasing will not interfere with vehicular traffic along said county road or adversely affect the safety of the traveling public: PROVIDED FURTHER, That any such sale, lease or rental shall be by public bid in the manner provided by law: AND PROVIDED FURTHER, That nothing herein shall prohibit any county from granting easements of necessity.

Although use of this authority is entirely discretionary with the County, the statute clearly recognizes the ROW is a sufficient property interest to be capable of lease.

the ROW. *See* 2 DELOS F. WILCOX, MUNICIPAL FRANCHISES 771 (1911) (“In every case the obligations imposed should fully offset the value of the special privileges granted.”); *City of Spokane*, 175 Wash. at 108; *City of Everett*, 97 Wash. at 267-68.

The 1937 Highway Act did nothing to limit historical or statutory county franchise authority. To the contrary, the Highway Act *re-enacted* in substantially the same form the original county franchise statute. *See* Laws of 1937, ch. 187, § 38; *see also* *York*, 28 Wn.2d at 899. Like the original 1905 enactment, the 1937 enactment confirmed and validated existing county franchises granted prior to 1937. Laws of 1937, ch. 187, § 41. The remainder of the Highway Act reinforced counties’ authority and control over county ROW. *See* Laws of 1937, ch. 187, § 2 (boards of county commissioners shall establish, construct, maintain, etc. county roads as agents of the state (codified at RCW 36.75.020)); § 3 (conferring powers including “to perform all acts necessary and proper for the administration of the county roads...and in relation thereto to exercise all other powers and perform all other duties by this act required or hereafter provided by law” (codified at RCW 36.75.040(4))).

RHAW’s claim that the Ordinance exceeds the County’s authority as “merely the state’s agent” under RCW 36.75.020, *see* RHAW Br. at 3, is identical to arguments made by the Respondents and should be rejected

for the reasons set forth in the County’s reply brief. *See* Reply Br. at 17-18. Nor does RCW 36.75.040(5) limit county franchise authority. This statute merely allows for the rental or lease of ROW for purposes independent of the franchise statute. It does not limit other forms of consideration historically authorized as conditions of franchises.¹² Contrary to RHAW’s claim, the fact that the Highway Act did not specifically authorize franchise rental compensation in a manner akin to RCW 36.75.040(5) does not preclude the County from charging rent. This argument also ignores the County’s home rule charter authority, under which the proper question is not whether specific legislation *authorizes* the Ordinance, but whether any statute or constitutional provision expressly *prohibits* it. *See* Opening Br. at 45-48; Reply Br. at 17-22. The answer here is no. Moreover, as a practical matter, there was no need for specific authorization where county authority to require consideration in connection with a franchise agreement was established long ago.

Finally, RHAW’s attempted comparison of state and county franchise powers should be rejected.¹³ While RCW 47.44.020 imposes

¹² Historically, franchise consideration could be in the form of money, in-kind services, or other things of value. *See, e.g., Burns*, 161 Wn.2d at 144 (“Because a franchise is a valuable property right, it is a privilege for which cities, historically, have exacted compensation in the form of free services or a cash payment.”).

¹³ RHAW also attempts to distinguish between cities and counties under the Highway Act, relying solely (and unconvincingly) on the number of sections and pages dedicated to each type of local government. RHAW Br. at 10-11. No authority supports this distinction.

certain limits on the *state* with respect to franchise conditions, no such limits apply to counties. The lack of limitations on county authority supports the conclusion that counties hold broader authority under the applicable statutes. Demonstrating the dearth of authority supporting the utilities' position, RHAW cites the same dissenting opinion that Puget Sound Energy invokes, *Wash. State Highway Comm'n v. Pac. Nw. Bell Tel. Co.*, 59 Wn.2d 216, 228-29 367 P.2d 605 (1961) (Hunter, J., dissenting). *See also* County's Resp. to PSE Br. at 5-6. The dissent's analysis was limited to *state highways* and did not address county roads. *See id.* at 228-29 (Hunter, J., dissenting). Further, *York* (which the dissent cited in support of its conclusions) does not hold that utilities must be granted free use of the ROW. In sum, RHAW fails to overcome counties' historical and statutory power to charge rent in conjunction with the grant of a franchise.¹⁴

¹⁴ Amici also argue that no other county in Washington charges rental compensation. *See* RHAW Br. at 9; WRECA Br. at 15-16. Even if this is true (and the historical record suggests it is not, *see* Opening Br., Appendix at C, D), it is irrelevant to the question of whether the County has the authority to charge rental compensation for use of its ROW.

B. Rental Compensation Does Not Impair the Rights of Utilities.

1. Dedications to the Public Accrue to King County, Not Particular Utilities.

Plat dedication language granting streets “to the use of the public...for all public purposes” creates a public easement held in trust by the local government of general jurisdiction (here, the County). *See Reply Br.* at 38-42. Like the Respondents in this case, WRECA cites no authority for its vague claim of “easements and use rights” stemming from such general dedication language, nor does it explain how its members (private utilities) are included within the “public” to which the ROW is dedicated. *WRECA Br.* at 10-12. These claims fail for the reasons already stated. *See Reply Br.* at 38-42.¹⁵

Nor do plat dedications referring generally to “utility” uses create broad easements for utility facilities in the ROW. WRECA points to the Middle Fork and RiverSi plat dedications in this regard, but it misleadingly and inaccurately quotes the documents. *See WRECA Br.* at

¹⁵ For the same reasons, WRECA is mistaken in claiming (again, without citation to relevant authority) that the County’s acceptance of a plat dedication creates “contractual” rights in favor of unspecified utilities. *See WRECA Br.* at 11 & n.13. The cases on which WRECA relies are inapplicable. Both cases involved telephone and telegraph companies that operated facilities in public ROW pursuant to state statutes specifically authorizing the same. *City of Seattle v. W. Union Tel. Co.*, 21 Wn.2d 838, 848, 856-57, 153 P.2d 859 (1944); *City of Des Moines v. Iowa Tel. Co.*, 162 N.W. 323, 324, 331 (Iowa 1917). Neither case involved statutory dedication. WRECA identifies no similar statute applicable to its own members here.

10-11. The Middle Fork and RiverSi plats each contain a section titled “Dedication” providing that the dedicators “hereby dedicate to the use of the public forever all *streets and avenues* not shown as private hereon and dedicate the use thereof for all public purposes not inconsistent with the use thereof for public highway purposes[.]” *See* Appendix A attached hereto (emphasis added).¹⁶ The “utilities” language on which WRECA relies appears in a subsequent provision dedicating to the use of the public “all *easements and tracts* shown on this plat for all public purposes as indicated thereon, including but not limited to parks, open space, utilities, and drainage....” *See id.* (emphasis added).¹⁷ Thus, the language specific to streets does not reference utilities. Although the dedication of “easements and tracts” references “utilities” as one *purpose* of the dedication, it does not grant rights to any specific utility, nor does it grant utilities a broad right to locate facilities within “easements or tracts” for free.

Indeed, the fact that separate sections of the Middle Fork and RiverSi plats reserve specific easements for named entities belies

¹⁶ The Middle Fork and RiverSi plats are included in the Clerk’s Papers filed with this Court, *see* CP 2017-19, 2021-23, but are not legible. Accordingly, the County has attached legible copies as Appendix A hereto. Additionally, these are public documents of which this Court may take judicial notice. *See* RAP 10.4(c), ER 201(f).

¹⁷ The plat maps for the Middle Fork and RiverSi do show “tracts” and “easements” including notations for drainage, open space, private trail, and slopes. CP 2018-19, 2023.

WRECA's claim that such easements are created by the plats' general dedication language. A plat dedication *may* reserve or grant rights to specific entities only if the dedicator clearly expresses intent to do so and the conditions do not deprive the County of its power to regulate and control the public streets. *See N. Spokane Irrigation Dist. No. 8 v. Spokane Cty.*, 86 Wn.2d 599, 602-04, 547 P.2d 859 (1976); *see also* RCW 58.17.165; RCW 58.08.015; *Frye v. King Cty.*, 151 Wash. 179, 182, 275 P. 547 (1929) (intention of the dedicator controls). Here, under a section titled "Easement Reservations," the Middle Fork plat provides:

An easement is hereby reserved for and granted to Tanner Electric Co-Op, Sallal Water Assoc., Telephone Utilities of Washington, any cable television company, and their respective successors and assigns, ***under and upon the front seven feet parallel with and adjoining the street frontage of all lots and tracts*** in which to install . . . equipment for the purpose of serving this subdivision and other property with electric, water, telephone and utility service.

See Appendix A (emphasis added). Under a section titled "Easement Provisions," the RiverSi plat reserves and grants a similar easement to Tanner Electric and three other named utilities "under and upon the ***exterior 7 feet, parallel with and adjoining the street frontage of all lots and tracts***" in which to locate their facilities. *Id.* (emphasis added).

The import of the Middle Fork and RiverSi plats is as follows:
The streets are dedicated generally to the public, resulting in an easement

held in trust by the County. Specific named utilities are granted easements over limited portions of the plat area for specific purposes. But the plats in no way grant easements or any other property rights to utilities not specifically named, nor do they grant the named entities unlimited easements over all parts of the ROW. Nor do easement reservations for specific utilities defeat the County's general authority to charge franchise rental compensation for use of the ROW. Rather, to the extent a particular utility claims a full or partial rental exemption based on express reservation or grant of easement rights, that issue is properly raised and addressed during individual franchise negotiations.

2. Individual Rights in the ROW Are Irrelevant to the County's General Authority to Charge Rent.

Alleging preexisting rights to place its facilities in the ROW,¹⁸ SWA attacks the Ordinance as an attempt by the County to “force easement holders to either pay rental compensation or be ejected from” the roadway. SWA Br. at 2. But SWA mischaracterizes the County's position in this case. As the County has consistently argued throughout these proceedings, the fact that specific utilities may have existing easements or other rights in all or part of the ROW in certain locations is irrelevant to the County's *general authority* to charge rent for use of the

¹⁸ SWA claims a right reserved by deed, but fails to provide a copy of the alleged deed.

ROW. Rather, the issue of individual utility easements or other rights retained or granted in plat dedications, deeds, or additional instruments is one to be handled case-by-case during the negotiation process. *See supra*, Section II(B)(1) (response to WRECA arguments); Reply Br. at 42 n.32¹⁹; *see also* CP 2085. As SWA acknowledges, it is not a party to this case. If SWA claims that existing easement rights in all or part of the ROW exempt it from paying rent, it is free to (and should) raise that claim when the County seeks to negotiate compensation with it. Such a claim, however, has no bearing on the County's authority to enact the Ordinance generally, or the facial validity of the Ordinance as to the vast majority of the ROW that has no special utility easements.²⁰

Similarly, this Court need not address SWA's claims that the Ordinance will result in unconstitutional taking of property, unconstitutional non-uniform taxes, and substantive due process violations, because each of these claims depends on SWA's mischaracterization of the County's arguments in this case. Regardless, these claims are unripe and irrelevant for the reasons discussed above.

¹⁹ Contrary to SWA's characterization, footnote 32 of the County's reply brief clarifies that utility rights should be raised and addressed individually. The County has not argued that its authority to charge rent supersedes valid existing easement rights.

²⁰ A law is facially valid unless it is invalid under all circumstances. *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). The fact that individual utilities may hold unique rights that absolve them from paying rent does not mean the Ordinance is invalid as to all parties. To the contrary, the very purpose of the negotiation process is to address unique circumstances applicable to each party.

C. Rental Compensation Is Not a Regressive Tax.

Amici also largely repeat the Respondents' incorrect arguments that rental compensation constitutes an invalid tax. These arguments fail for the same reasons addressed in prior briefing. *See, e.g.*, Reply Br. at 46-55. Thus, WRECA's claim that the Legislature must authorize the County's charge and RHAW's claim that the charge is regressive fail because they depend entirely on the incorrect assumption that the charge is a tax. *See* WRECA Br. at 14-15; RHAW Br. at 14-15.

Further, WRECA relies principally on dicta from *Kerr* for its claim that the County cannot "profit" by including compensation requirements in franchise agreements. *See* WRECA Br. at 12-14. Not only is *Kerr* out-of-state authority and not binding on this Court,²¹ it does not hold that municipal charges for ROW use must be limited in the same manner as regulatory fees. As discussed *supra*, Section II(A)(3), this Court has upheld charges that exceed franchise administrative costs. Moreover, counties do not "profit" from receiving rental compensation for a ROW asset they hold; to the contrary, they assure that full and fair value is received for the use of the asset to the benefit of the entire public. This is

²¹ No Washington decision cites *Kerr* or adopts a similar analysis. By contrast, this Court, the United States Supreme Court, and the Washington Attorney General all have recognized the authority to condition franchise issuance on payment of reasonable rent or other consideration. *See* Opening Br. at 24-26, 29-31 (citing authorities).

especially important when users are private entities, such as Tanner Electric. Absent rental compensation, Tanner Electric and its customers derive a special benefit from the ROW, which is owned not by them, but by the public as a whole.

III. CONCLUSION

The Ordinance is within the County's broad authority and is consistent with Washington law. Accordingly, the Court should reverse and uphold the Ordinance.

RESPECTFULLY SUBMITTED this 5th day of September, 2019.

DANIEL T. SATTERBERG
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PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, over the age of 21 years, and not a party to this action. On the 5th day of September, 2019, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document and including Appendix A upon the parties listed below:

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DATED this 5th day of September, 2019.



Sydney Henderson

APPENDIX A

MIDDLE FORK PARK

148/28

SHEET 1 OF 3

A PORTION OF THE SW 1/4, SECTION 12 & THE NW 1/4, SECTION 13, TOWNSHIP 23N, RANGE 8E, WM KING COUNTY, WASHINGTON

LEGAL DESCRIPTION

THAT PORTION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING NORTHERLY OF THE CENTER OF THE CHANNEL OF THE MIDDLE FORK OF THE SNOQUALMIE RIVER, AND; THAT PORTION OF THE WEST 250 FEET OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 23 NORTH, RANGE 8 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING SOUTHERLY OF THE EASEMENT CONVEYED TO THE UNITED STATES OF AMERICA RECORDED UNDER AITOR'S FILE NUMBER 296182 (MT. ST. ROAD); SUBJECT TO ALL RESTRICTIONS AND ENCUMBRANCES OF RECORD.

RESTRICTIONS

NO LOT OR PORTION OF A LOT IN THIS PLAT SHALL BE DIVIDED AND SOLD, RESOLD OR OWNERSHIP CHANGED OR TRANSFERRED WHEREBY THE OWNERSHIP OF ANY PORTION OF THIS PLAT SHALL BE LESS THAN THE AREA REQUIRED FOR THE USE DISTRICT IN WHICH LOCATED STRUCTURES, FILL OR OBSTRUCTIONS (INCLUDING BUT NOT LIMITED TO DECKS, PATIOS, OUT-BUILDINGS, OR OVERHANGS) SHALL NOT BE PERMITTED BEYOND THE BUILDING SETBACK LINE OR WITHIN DRAINAGE EASEMENTS, ADDITIONALLY GRADING AND CONSTRUCTION OF FENCING SHALL NOT BE ALLOWED WITHIN THE DRAINAGE EASEMENTS SHOWN ON THIS PLAT MAP UNLESS OTHERWISE APPROVED BY KING COUNTY BUILDING AND LAND DEVELOPMENT DIVISION.

EASEMENT RESERVATIONS

AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO TANNER ELECTRIC CO-OP, SALLAL WATER ASSOC., TELEPHONE UTILITIES OF WASHINGTON, ANY CABLE TELEVISION COMPANY, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, UNDER AND UPON THE FRONT SEVEN FEET PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF ALL LOTS AND TRACTS IN WHICH TO INSTALL, LAY, CONSTRUCT, RENEW, OPERATE AND MAINTAIN UNDERGROUND PIPE, CONDUIT, CABLES AND WIRES WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THIS SUBDIVISION AND OTHER PROPERTY WITH ELECTRIC WATER, TELEPHONE AND UTILITY SERVICE TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS AT ALL TIMES FOR THE PURPOSES HEREIN STATED. THESE EASEMENTS ENTERED UPON FOR THESE PURPOSES SHALL BE RESTORED AS NEAR AS POSSIBLE TO THEIR ORIGINAL CONDITION, NO LINES OR WIRES FOR THE TRANSMISSION OF ELECTRIC CURRENT OR FOR TELEPHONE USE OR CABLE TELEVISION SHALL BE PLACED OR PERMITTED TO BE PLACED UPON ANY LOT UNLESS THE SAME SHALL BE UNDERGROUND OR IN CONDUIT ATTACHED TO A BUILDING.

BUILDING SETBACKS & NATIVE GROWTH PROTECTION

STRUCTURES, FILLS AND OBSTRUCTIONS (INCLUDING BUT NOT LIMITED TO DECKS, PATIOS, OUT-BUILDINGS, OR OVERHANGS BEYOND EIGHTEEN INCHES) ARE PROHIBITED BEYOND THE BUILDING SETBACK LINE, AND WITHIN THE 100-YEAR FLOOD PLAIN, AND WITHIN THE NATIVE GROWTH PROTECTION EASEMENTS AS SHOWN.

DEDICATION OF A NATIVE GROWTH PROTECTION EASEMENT (NGPE) CONVEYS TO THE PUBLIC A BENEFICIAL INTEREST IN THE LAND WITHIN THE EASEMENT. THIS INTEREST INCLUDES THE PRESERVATION OF NATIVE VEGETATION FOR ALL PURPOSES THAT BENEFIT THE PUBLIC HEALTH, SAFETY AND WELFARE, INCLUDING CONTROL OF SURFACE WATER AND EROSION, MAINTENANCE OF SOLE STABILITY, VISUAL AND AURAL BUFFERING, PROTECTION OF PLANTS AND ANIMAL HABITAT. THE NGPE IMPOSES UPON ALL PRESENT OWNERS AND SUCCESSORS OF LAND SUBJECT TO THE EASEMENT THE OBLIGATION, ENFORCEABLE ON BEHALF OF THE PUBLIC BY KING COUNTY, TO LEAVE UNDISTURBED ALL TREES AND OTHER VEGETATION WITHIN THE EASEMENT, THE VEGETATION WITHIN THE EASEMENT MAY NOT BE CUT, PRUNED, COVERED WITH FILL, REMOVED OR DAMAGED WITHOUT EXPRESS PERMISSION FROM KING COUNTY, WHICH PERMISSION MUST BE OBTAINED IN WRITING FROM THE KING COUNTY BUILDING AND LAND DEVELOPMENT DIVISION OR ITS SUCCESSOR AGENCY.

BEFORE BEGINNING AND DURING THE COURSE OF ANY GRADING, BUILDING CONSTRUCTION, OR OTHER DEVELOPMENT ACTIVITY ON A LOT SUBJECT TO THE NGPE, THE COMMON BOUNDARY BETWEEN THE EASEMENT AND THE AREA OF DEVELOPMENT ACTIVITY MUST BE FENCED OR OTHERWISE MARKED TO THE SATISFACTION OF KING COUNTY.

LAND SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT OF "MIDDLE FORK PARK" IS BASED UPON AN ACTUAL SURVEY AND SUBDIVISION OF SECTION 13, T23N, R8E, W1M, THAT THE COURSES AND DISTANCES ARE SHOWN CORRECTLY THEREON, THAT THE MONUMENTS WILL BE SET AND THE LOT AND BLOCK CORNERS STAKED CORRECTLY ON THE GROUND AS CONSTRUCTION IS COMPLETED, AND THAT I HAVE FULLY COMPLIED WITH THE PROVISIONS OF THE PLATTING REGULATIONS.

Gordon S. Rector, PLS
CERTIFICATE NO. 11691



FINANCE DIRECTOR'S CERTIFICATE

I HEREBY CERTIFY THAT ALL PROPERTY TAXES ARE PAID, THAT THERE ARE NO DELINQUENT SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION AND THAT ALL SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION ON ANY OF THE PROPERTY CONTAINED HEREIN, AND LISTED AS STREETS, ALLEYS OR FOR ANY OTHER PUBLIC USE, ARE PAID IN FULL. THIS 30th DAY OF October, 1988.

Office of Finance

Director of Finance: [Signature] Deputy Director of Finance: [Signature]

RECORDING CERTIFICATE 8810259207

FILED FOR RECORD AT THE REQUEST OF THE KING COUNTY COUNCIL THIS 35th DAY OF October, 1988, AT 27 MINUTES PAST 10 O'CLOCK, AM AND RECORDED IN VOLUME 143 OF PLATS, PAGE 2330, RECORDS KING COUNTY, WASHINGTON.

DIVISION OF RECORDS AND ELECTIONS

JANE HAGUE, Manager; CAROLYN ABLEMAN, Superintendent of Records

B.A.L.D. FILE NO. 687-4

DEDICATION

KNOW ALL PEOPLE BY THESE PRESENTS THAT WE, THE UNDERSIGNED OWNERS OF INTEREST IN THE LAND HEREBY SUBDIVIDED, HEREBY DECLARE THIS PLAT TO BE THE GRAPHIC REPRESENTATION OF THE SUBDIVISION MADE HEREBY, AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS AND AVENUES NOT SHOWN AS PRIVATE HEREON AND DEDICATE THE USE THEREOF FOR ALL PUBLIC PURPOSES NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES, AND ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS FOR AND SHOWN THEREON IN THE ORIGINAL REASONABLE GRADING OF SAID STREETS AND AVENUES, AND FURTHER DEDICATE TO THE USE OF THE PUBLIC ALL EASEMENTS AND TRACTS SHOWN ON THIS PLAT FOR ALL PUBLIC PURPOSES AS INDICATED THEREON, INCLUDING, BUT NOT LIMITED TO PARKS, OPEN SPACE, UTILITIES AND DRAINAGE UNLESS SUCH EASEMENTS OR TRACTS ARE SPECIFICALLY IDENTIFIED ON THIS PLAT AS BEING DEDICATED OR CONVEYED TO A PERSON OR ENTITY OTHER THAN THE PUBLIC. FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED WAIVE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS AND ANY PERSON OR ENTITY DERIVING TITLE FROM THE UNDERSIGNED, ANY AND ALL CLAIMS FOR DAMAGES AGAINST KING COUNTY, ITS SUCCESSORS AND ASSIGNS WHICH MAY BE OCCASIONED BY THE ESTABLISHMENT, CONSTRUCTION, OR MAINTENANCE OF ROADS AND/OR DRAINAGE SYSTEMS WITHIN THIS SUBDIVISION OTHER THAN CLAIMS RESULTING FROM INADEQUATE MAINTENANCE BY KING COUNTY. FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED AGREE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS TO INDEMNIFY AND HOLD KING COUNTY, ITS SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY DAMAGE, INCLUDING ANY COST OF DEFENSE, CLAIMED BY PERSONS WITHIN OR WITHOUT THIS SUBDIVISION TO HAVE BEEN CAUSED BY ALTERATIONS OF THE GROUND SURFACE, VEGETATION, DRAINAGE OR SURFACE OR SUB-SURFACE WATER FLOWS WITHIN THIS SUBDIVISION, OR BY THE ESTABLISHMENT, CONSTRUCTION OR MAINTENANCE OF THE ROADS WITHIN THIS SUBDIVISION, PROVIDED THIS WAIVER AND INDEMNIFICATION SHALL NOT BE CONSTRUED AS RELEASING KING COUNTY, ITS SUCCESSORS OR ASSIGNS FROM LIABILITY FOR DAMAGES, INCLUDING THE COST OF DEFENSE, RESULTING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF KING COUNTY, ITS SUCCESSORS, OR ASSIGNS. THIS SUBDIVISION, DEDICATION AND WAIVER OF CLAIMS IS MADE WITHIN THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF SAID OWNERS. IN WITNESS WHEREOF WE HAVE SET OUR HANDS AND SEALS.

[Signatures of John R. Day, President - Middle Fork Development Co. and Richard S. Vico, Vice Pres. National Bank of Alaska]

ACKNOWLEDGEMENTS

STATE OF WASHINGTON, COUNTY OF KING

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT JOHN R. DAY, PRESIDENT OF MIDDLE FORK DEVELOPMENT CO. SIGNED THIS INSTRUMENT AND ACKNOWLEDGED IT TO BE (HIS/HER) FREE AND VOLUNTARY ACT FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATE: 10-13-88 SIGNATURE OF NOTARY PUBLIC: [Signature] TITLE: Notary State of Washington MY APPOINTMENT EXPIRES: JUNE 18, 1989

STATE OF WASHINGTON, COUNTY OF KING

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT FREDERICK RICHARD SIGNED THIS INSTRUMENT AND ACKNOWLEDGED IT AS THE SENIOR VICE PRESIDENT OF NATIONAL BANK OF ALASKA TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATE: 10-13-88 SIGNATURE OF NOTARY PUBLIC: [Signature] TITLE: Notary State of Washington MY APPOINTMENT EXPIRES: JUNE 18, 1989

APPROVALS

PARKS, PLANNING AND RESOURCES DEPARTMENT

EXAMINED AND APPROVED THIS 14th DAY OF October, 1988

[Signature] DEVELOPMENT ENGINEER

EXAMINED AND APPROVED THIS 19th DAY OF October, 1988

[Signature] MANAGER, BUILDING AND LAND DEVELOPMENT DIVISION

KING COUNTY DEPARTMENT OF ASSESSMENTS

EXAMINED AND APPROVED THIS 19 DAY OF October, 1988

[Signature] KING COUNTY ASSESSOR; [Signature] DEPUTY KING COUNTY ASSESSOR

ACCOUNT NUMBER

KING COUNTY COUNCIL

EXAMINED AND APPROVED THIS 24th DAY OF October, 1988

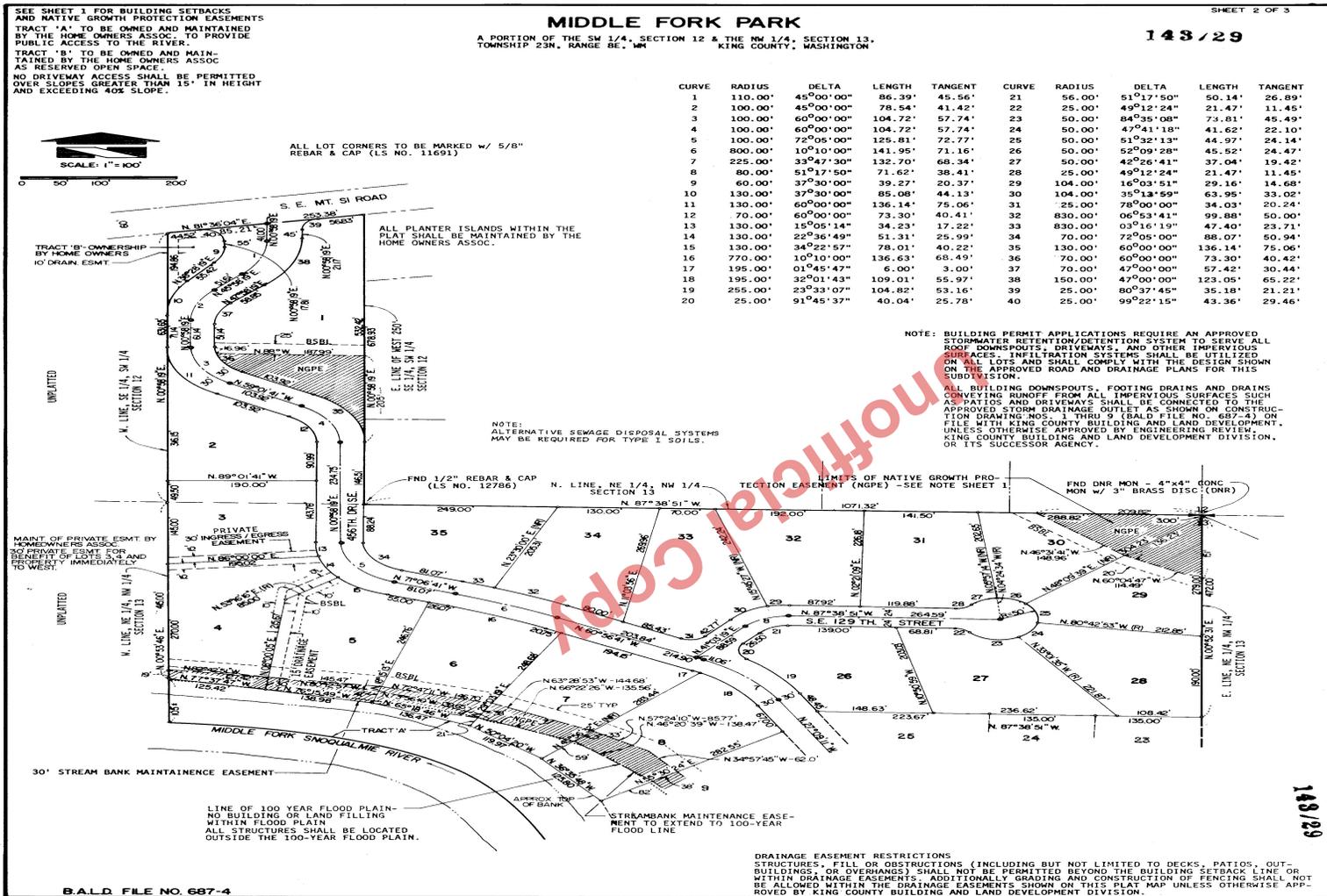
[Signature] CHAIRMAN, KING COUNTY COUNCIL; [Signature] CLERK OF THE COUNCIL

Red Copy Not for Record



148/28

226-21



226-21A

RIVERSI ESTATES IN THE SW1/4, SEC. 11 AND THE NW1/4, SEC. 14, T.23N., R.8E., W.M. KING COUNTY, WASHINGTON

161 18

DEDICATION:

KNOW ALL PEOPLE BY THESE PRESENTS that we, the undersigned owners of interest in the land hereby subdivided, hereby declare this plat to be the graphic representation of the subdivision made hereby, and do hereby dedicate to the use of the public forever all streets and avenues not shown as private hereon and dedicate the use thereof for all public purposes not inconsistent with the use thereof for public highway purposes and also the right to make all necessary slopes for cuts and fills upon the lots shown thereon in the original reasonable grading of said streets and avenues, and further dedicate to the use of the public all the easements and tracts shown on this plat for all public purposes as indicated thereon, including but not limited to parks, open space, utilities, and drainage unless such easements or tracts are specifically identified on this plat as being dedicated or conveyed to a person or entity other than the public, in which case we do hereby dedicate such streets, easements, or tracts to the person or entity identified and for the purpose stated.

Further, the undersigned owners of the land hereby subdivided, waive for themselves, their heirs and assigns and any person or entity (title from the undersigned, any and all claims for damages against King County, its successors and assigns which may be occasioned by the establishment, construction, or maintenance of roads and/or drainage systems within this subdivision other than claims resulting from inadequate maintenance by King County.

Further, the undersigned owners of the land hereby subdivided, agree for themselves, their heirs and assigns to indemnify and hold King County, its successors and assigns harmless from any damage, including any costs of defense, claimed by persons within or without this subdivision to have been caused by alterations of the ground surface, vegetation, drainage, or surface of sub-surface water flows within this subdivision or by establishment, construction or maintenance of the roads within this subdivision. Provided, this waiver and indemnification shall not be construed as releasing King County, its successors or assigns, from liability for damages, including the cost of defense, resulting in whole or in part from the negligence of King County, its successors, or assigns.

This subdivision, dedication, waiver of claims and agreement to hold harmless is made with the free consent and in accordance with the desires of said owners.

Stanton C. Merrill
Stanton C. Merrill
Lawrence P. Worley
Lawrence P. Worley
Bev Conklin
U.S. Bancorp Mortgage Company
William R. Martinez
William R. Martinez
TIM DORITY BY PETER SCHROEDER ATTORNEY IN FACT
Tim DORITY

Stanton C. Merrill
Stanton C. Merrill
Lawrence P. Worley
Lawrence P. Worley
Melissa L. Martinez
Melissa L. Martinez

STATE OF WASHINGTON)
County of) ss.

On this day personally appeared before me Stanton C. Merrill
and Lawrence P. Worley
to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that Stanton C. Merrill signed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this day of May 29, 1992
Stanton C. Merrill
Notary Public in and for the State of
Washington residing at Seattle



STATE OF WASHINGTON)
County of) ss.

On this day personally appeared before me _____
to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that _____ signed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this day of _____ 19____

Notary Public in and for the State of
Washington residing at _____

seal

STATE OF WASHINGTON)
County of OLYMPIA) ss.

On this 21ST day of May, 1992, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared BEV CONKLIN to me known to be the SECRETARY of _____

Secretary, respectively, of the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that SHE IS authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Oliver J. Hunt
OLYMPIA Notary Public in and for the State of Washington, residing at Port Had
MY APPOINTMENT EXPIRES: 10/14/92

STATE OF WASHINGTON)
County of KING) ss.

On this day personally appeared before me TIM DORITY BY PETER SCHROEDER ATTORNEY IN FACT to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that HE signed the same as HIS free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this day of MAY 28, 1992
Oliver J. Hunt
Notary Public in and for the State of Washington residing at Port Hadland WA

STATE OF WASHINGTON)
County of PINUC) ss.

On this day personally appeared before me WILLIAM B. MARTINEZ AND MELISSA L. MARTINEZ to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that THEY signed the same as THEIR free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this day of 28, MAY, 1992
Deanna Robinson
Notary Public in and for the State of Washington residing at Woodinville

SURVEYOR'S CERTIFICATE

I hereby certify that this plat of Riversi Estates is based upon an actual survey and subdivision of Section's 11 & 14, Township 23 North, Range 8 East, W.M., the courses and distances are shown correctly thereon; that the monuments will be set and the lot corners staked correctly on the ground; and that I have fully complied with the provisions of the statutes and platting regulations.

Professional Land Surveyor
Date 6/1/92



RECORDING CERTIFICATE

9207071354
Filed for record at the request of the King County Council this 7 day of July, 1992 A.D. at 8 minutes past 5:00 and recorded in Volume 160 of Plats, pages 18 thru 20, Records of King County, Washington.
Division of Records and Elections
Manager Rayne Caroleen Ableman
Superintendent of Records

VOL. 160 PG. 18

BALD FILE NO. S89P0050

JOB NO.	88070
DATE	2/92
SCALE	N/A
DESIGNED	S.K.
DRAWN	S.K.
CHECKED	R.K.
APPROVED	

EASTSIDE CONSULTANTS, INC.
415 RAINIER BLVD. N
ISSAQUAH, WASHINGTON 98027
PH: (206) 392-5351
FAX: 392-4676
ENGINEERS & SURVEYORS

SHEET 1 OF 3

229-73

RIVERSI ESTATES IN THE SW1/4, SEC. 11 AND THE NW1/4, SEC. 14, T.23N., R.8E., W.M. KING COUNTY, WASHINGTON

161 19

STATE OF WASHINGTON)
County of) ss.

On this day personally appeared before me _____
to me known to be the individual described in and who executed the within and
foregoing instrument, and acknowledged that _____ signed the same as
free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this day of _____ 19 ____

Notary Public in and for the State of
Washington residing at _____

seal

EASEMENT PROVISIONS:

An easement is hereby reserved for and granted to Tanner Electric Cooperative Telephone Utilities of Washington, Washington Natural Gas and King County Water District No. 104 and their respective successors and assigns, under and upon the exterior 7 feet, parallel with and adjoining the street frontage of all lots and tracts in which to install, lay, construct, renew, operate and maintain underground conduits, cables, pipe, and wires with necessary facilities and other equipment for the purpose of serving this subdivision and other property with electric, telephone, and utility service together with the right to enter upon the lots at all times for the purposes herein stated.

No lines or wires for the transmission of electric current or for telephone use, CATV, fire or police signals, or for other purposes, shall be placed or permitted to be placed upon any lot outside the buildings thereon unless the same shall be underground or in conduit attached to the building.

RESTRICTION

No lot or portion of a lot in this plat shall be divided and sold or resold or ownership changed or transferred whereby the ownership of any portion of this plat shall be less than the area required for the use district in which located.

DOWNSPOUT NOTE

"All building downspouts, footing drains from all impervious surfaces such as patios and driveways shall be connected to the approved permanent storm drain outlet as shown on the approved construction drawings # _____ of file with King County Building and Land Development Division (BALD). This plan shall be submitted with the application for any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. Individual lot infiltration systems, where permitted, shall be constructed at the time of the building permit and shall comply with said plans on file with BALD, unless otherwise approved by Engineering Review, King County BALD, or its successor agency.

Lots 1 through 9 inclusive, are approved for individual lot infiltration systems.

PRIVATELY OWNED OPEN SPACE TRACTS

Tract A, permanent open area: As a requirement for approval, this Tract is set aside and reserved for permanent open space and recreational use for the benefit of the present and future owner(s) of the lots in this subdivision as authorized by Ordinance No. 9600. As a condition of approval, the undersigned owners of interest in the land hereby subdivided do grant and convey a perpetual easement in Tract A for the use and benefit of all present and future owner(s) of the lots in this subdivision authorized by Ordinance No. 9600. Except as shown on the plat, no building shall be placed on Tract A and such Tract shall not be further subdivided or used for financial gain.

DRAINAGE EASEMENT RESTRICTIONS

Structures, fill, or obstructions (including but not limited to decks, patios, outbuildings, or overhangs) shall not be permitted beyond the building setback line or within drainage easements. Additionally, grading and construction of fencing shall not be allowed within the drainage easements shown on this plat map unless otherwise approved by King County Surface Water Management Division.

NOTE: The existing residence on lot 3 must connect to Sallie Water Assoc. at the time of system availability.

NOTE: "Future occupants shall contact the department of health regarding information about the location, design, and maintenance of their on-site wastewater disposal system."

BUILDING SETBACKS & NATIVE GROWTH PROTECTION EASEMENTS

Structures, fill & obstructions (including but not limited to decks, patios, outbuildings, or overhangs beyond 18 inches) are prohibited beyond the building setback line, and within 25 year flood plains (if applicable), and within the Native Growth Protection Easements (s) as shown.

Dedication of a Native Growth Protection Easement (NGPE) conveys to the public a beneficial interest in the land within the easement. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, visual and aural buffering, and protection of plant and animal habitat. The NGPE imposes upon all present and future owners and occupiers of land subject to the easement the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the easement. The vegetation within the easement may not be cut, pruned, covered by fill, removed or damaged without express permission from King County, which permission must be obtained in writing from the King County Building and Land Development Division or its successor agency.

Before beginning and during the course of any grading, building construction, or other development activity on a lot subject to the NGPE, the common boundary between the easement and the area of development activity must be fenced or otherwise marked to the satisfaction of King County.

FINANCE DIVISION CERTIFICATE:

I hereby certify that all property taxes are paid, that there are no delinquent special assessments certified to this office for collection and that all special assessments certified to this office for collection on any of the property herein contained, dedicated as streets, alleys or for other public use, are paid in full. This _____ day of _____ 19____

FINANCE DIVISION

D. Lee DeBick Stuigh J. Under
Manager, King County Finance Division Deputy

APPROVALS:

Parks, Planning and Resources Department

Examined and approved this 24th day of JUNE, 1992 A.D.

[Signature]
Development Engineer

Examined and approved this 24th day of JUNE, 1992 A.D.

[Signature]
Manager, Building and Land Development Division

King County Department of Assessments

Examined and approved this 30 day of JUNE, 1992 A.D.

NORWOOD J. BROOKS [Signature]
King County Assessor Deputy King County Assessor

Account No. _____

King County Council

Examined and approved this 6th day of July, 1992 A.D.

[Signature] [Signature]
Chairman, King County Council Clerk of the Council



BALD FILE NO. S89P0050

JOB NO.	88070
DATE	2/92
SCALE	N/A
DESIGNED	S.K.
DRAWN	S.K.
CHECKED	R.K.
APPROVED	

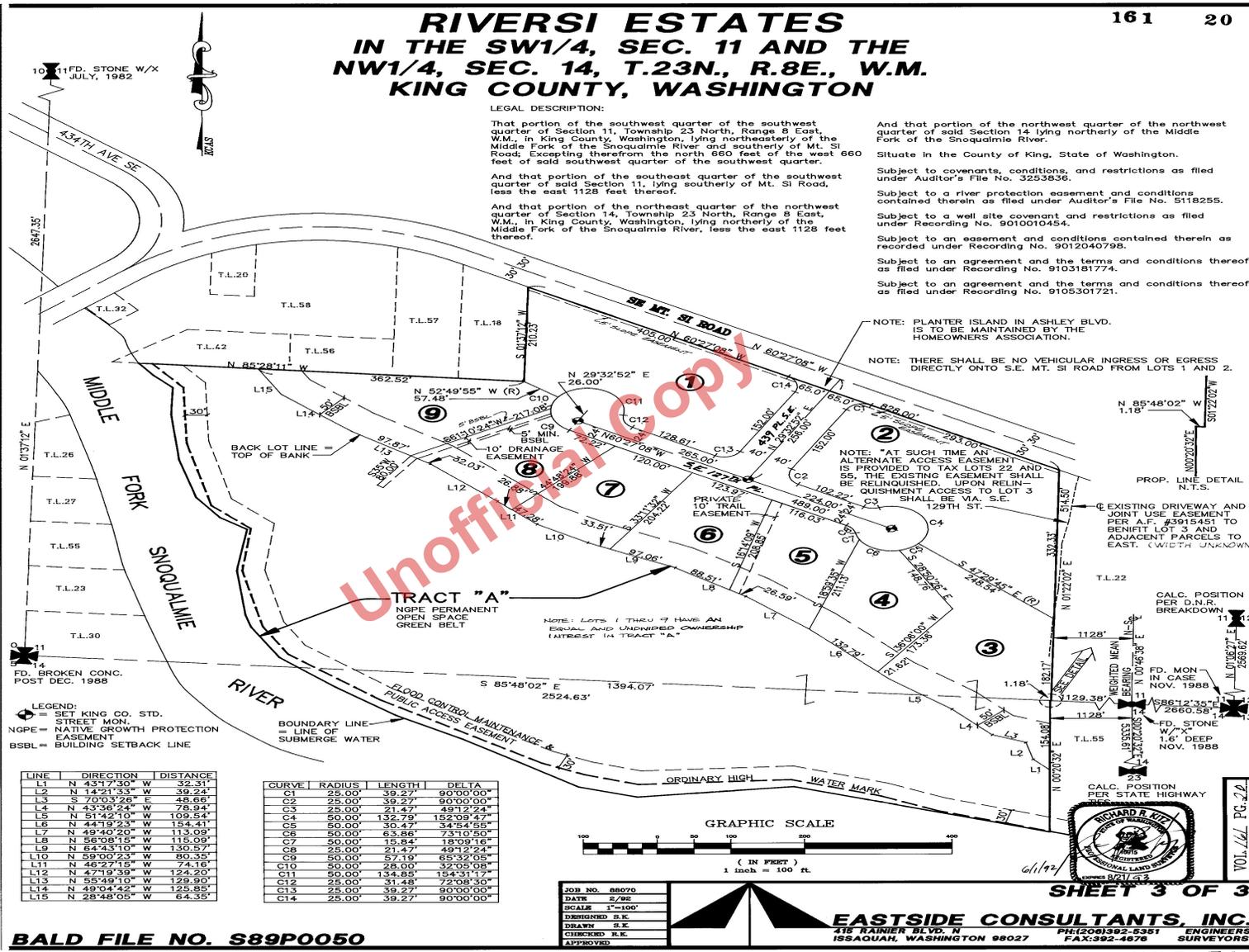


EASTSIDE CONSULTANTS, INC.
PH: 206/382-3851 ENGINEERS
ISSAQUAH, WASHINGTON 98027 FAX: 362-4678 SURVEYORS

SHEET 2 OF 3

229-73A

Vol. L&L PG. 12



BALD FILE NO. S89P0050

JOB NO. 88070
DATE 2/18
SCALE 1"=100'
DESIGNED S.K.
DRAWN S.K.
CHECKED S.K.
APPROVED



EASTSIDE CONSULTANTS, INC.
415 RAINIER BLVD. N
ISSAQUAH, WASHINGTON 98027
PH: (206) 392-5351
FAX: 392-4676
ENGINEERS
SURVEYORS

229-73 E

PACIFICA LAW GROUP

September 05, 2019 - 4:14 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96360-6
Appellate Court Case Title: King County v. King County Water Districts, et al

The following documents have been uploaded:

- 963606_Briefs_20190905155351SC147743_0437.pdf
This File Contains:
Briefs - Answer to Amicus Curiae
The Original File Name was County Response to Amici WRECA RHAW and SWA.pdf
- 963606_Motion_20190905155351SC147743_2739.pdf
This File Contains:
Motion 1 - Overlength Brief
The Original File Name was Motion to file overlength amicus response.pdf

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- dashbaugh@aretelaw.com
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- matt@tal-fitzlaw.com
- mleen@insleebest.com
- neilrobblee@gmail.com
- nrobblee@hotmail.com
- nrobblee@hotmail.com
- phil@tal-fitzlaw.com
- richard@jonson-jonson.com
- rthomas@perkinscoie.com
- ryancrawfordthomas@gmail.com

- sarah.washburn@pacificlawgroup.com
- spitzerhd@gmail.com
- tsarazin@insleebest.com

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Seattle, WA, 98101

Phone: (206) 245-1700

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