

64198-1

64198-1

NO. 64198-1-I

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

KEN JACOBSON,

Appellant,

v.

WILLIAM C. COWIN and REBECCA NYBERG, husband and wife;
GEORGE CODDINGTON and KAY CODDINGTON, husband and wife;
and BCSCBN, INC., a Washington corporation,

Respondents.

Appeal from the Superior Court for King County
Cause No. 07-2-35604-5 SEA

BRIEF OF APPELLANT

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2010 MAR 18
COURT OF APPEALS
DIVISION I

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I. INTRODUCTION

This litigation concerns a 58 acre parcel of undeveloped property located just west of the Columbia River and south of the Interstate 90 bridge at Vantage, Kittitas County, Washington, commonly known as “Vantage Bay.” After nearly a decade of effort to position the property for purchase, Appellant Ken Jacobson finally signed a \$3 million purchase and sale agreement in May 2005. Jacobson then devoted nearly another year to working out terms for the assignment of that purchase and sale agreement to Respondents George Coddington, William Cowin and Cowin’s company BCSCBN, Inc. In exchange for the assignment, Respondents agreed to fund the purchase and development of the Vantage Bay property as a 310 lot vacation home plat, pay Jacobson 33% of the development profits, make monthly payments of \$6,500 to him during the development process, and assist him with financing for purchase and development of the nearby “Motel 6” property. Those agreements were embodied in a two page Term Outline crafted and signed by the parties in April 2006 (reproduced at Appendix A to this brief for ease of reference.)

Following execution of the Term Outline and Jacobson’s assignment of the purchase and sale agreement, the parties obtained preliminary plat approval for the development, closed the purchase of the Vantage Bay property, and obtained water and access rights and other

entitlements necessary for final plat approval. However, disputes arose among the parties by late summer 2007, and Coddington, Cowin and BCSCBN refused to provide Jacobson with the rest of the agreed consideration for his assignment. Shortly before the July 2009 trial of this case, Cowin declared the development project to be “non-viable,” although this unilateral pronouncement did not stop him from continuing to work on water rights and other development entitlements.

Due to the cutoff of monthly payments under the Term Outline, Jacobson was forced to represent himself at the trial. There Judge Pro Tem George Finkle not only failed to enforce Jacobson’s rights under the Term Outline, but he declared virtually all of those rights to be terminated, the sole exception being a first right of refusal to re-purchase the property, which he gave Jacobson only 36 days to complete. When Jacobson was unable to make arrangements to close a purchase of the property in that impossibly short time period, the Trial Court entered a \$342,546 money judgment against him, representing 33% of the costs which BCSCBN claimed to have incurred in pursuing development of the Vantage Bay property. Yet the Trial Court left full title to the property and all of its development rights with BCSCBN, without any restriction against proceeding with the Vantage Bay development, and without any obligation to share with or credit to Jacobson the proceeds from

subsequent sale or development. Through this appeal, Jacobson seeks reversal of these erroneous and inequitable decisions.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The Trial Court erred in determining that Appellant Jacobson breached his obligations under the Term Outline and that Respondent BCSCBN was thereby excused from performing its obligation to make the \$6,500 monthly fee payments due to Appellant for the period from September 2007 until June 2009, when Respondent Cowin declared the Vantage Bay project to be not financially viable.

2. The Trial Court erred in determining the dollar amount of Vantage Bay project development costs which were actually expended by BCSCBN and properly allocable to Jacobson under the Term Outline.

3. The Trial Court's erroneous determination of BCSCBN's recoverable development costs also resulted in its establishment of an excessive dollar amount which Jacobson was required to pay to exercise his first right of refusal to purchase the Vantage Bay property and related development rights.

4. The Trial Court erred in providing Jacobson only 36 days in which to exercise his first right of refusal and close a purchase the Vantage Bay property and related rights, a clearly unreasonable period of

time given the nature of the property and the financial and real estate market conditions then prevailing.

5. The Trial Court erred in failing to require BCSCBN to sell the Vantage Bay property and related rights in their existing condition in order to recoup some or all of the purchase and development costs expended by BCSCBN, before the entry of any money judgment against Jacobson for such costs.

6. The Trial Court erred in failing to preclude Cowin from unilaterally revoking his discretionary “non-viability” determination with respect to the Vantage Bay project.

7. The Trial Court erred in granting BCSCBN a money judgment against Jacobson for 33% of the Vantage Bay project costs, without first requiring that the property and related rights be sold to cover those costs, and without any provision for reduction of the judgment to the extent funds are realized by BCSCBN from post-judgment sales of the Vantage Bay property or related rights.

8. The Trial Court erred in setting a June 30, 2010 deadline for payment of the “Motel 6” note due from Jacobson to Cowin, without also setting a deadline for Cowin to sign the short plat for the “Motel 6” property as required in order to record it with Kittitas County and create three separate legal lots which could be sold by Jacobson to pay the loan.

B. Issues Pertaining to Assignments of Error

1. Where a paid contractor relationship is part of the consideration for business transaction, can that relationship be terminated at will? If not, can the relationship be terminated for “cause,” where a material breach has not been proven, and the contractor has not been provided any notice of alleged breach nor the opportunity to cure such breach? (Assignment of Error 1)

2. Was BCSCBN entitled to reimbursement of “accrued shareholder loan interest” which it neither paid nor was entitled to charge under the Term Outline, or inflated “lease” and “insurance” costs paid to a sister company, without proof that any lease or insurance policy actually existed? Did the Trial Court err in admitting evidence of such “expenses” over Jacobson’s objections? (Assignments of Error 2 and 3)

3. Because the Term Outline did not provide a time period for exercise of Jacobson’s first right of refusal to repurchase the Vantage Bay property and related development rights, was Jacobson entitled to a reasonable period of time to exercise that right close that purchase? Was 36 days a reasonable period of time? (Assignment of Error 4)

4. Given Cowin’s exercise of the right to declare development of the Vantage Bay property non-feasible, does the Term Outline entitle BCSCBN to recover 33% of the development costs from Jacobson,

without ceasing development of the property, and without first selling the property and related rights to recoup those development costs? (Assignment of Error 5, 6 and 7)

5. Where the Motel 6 Note does not have a fixed due date, was it appropriate for the Trial Court to require full payment of the note by June 30, 2010, without also requiring Cowin to sign the short plat document which must be recorded in order to create three legally salable lots? (Assignment of Error 8)

III. STATEMENT OF THE CASE

A. Statement of Facts

The Vantage Bay property is a prime piece of real estate, adjacent to the Columbia River, just south of the Interstate 90 bridge at Vantage, Washington (Ex. 1, 58, 167 and 168). Jacobson had worked with its owner Joyce Palelek since at least 1996 to resolve title and water issues, configure the property and set the stage for its development as vacation home lots. (715RP 121-26¹, Ex. 192). On May 27, 2005, he finally signed a purchase and sale agreement to purchase the property for \$3

¹ The Report of Proceedings in this appeal covers four days of trial court transcripts, consisting of the trial on July 13, 14, 15 and 16, 2009, and the post-trial hearing on presentation of findings, conclusions and judgment on August 24, 2009. Because there is not a single sequence of page numbers for the entire Report of Proceedings - each day's transcript starts at page 1 - we will refer to the July 13 transcript herein as "713RP," July 14 as "714RP," July 15 as "715RP," July 16 as "716RP" and August 24 as 824RP. Thus, "715RP 121" refers to page 12 of the July 15, 2009 transcript.

million (the "Palelek PSA," Ex. 100). The Palelek PSA was subject to one-year feasibility, rezoning and other contingencies, extendable for two additional six month periods, with closing to occur within 30 days following the removal of contingencies. Under section 16 thereof, the Palelek PSA was assignable by Jacobson, subject to the Paleleks' consent, not to be unreasonably withheld. (CP 162, Finding of Fact ("FF") 5.1)

Following the execution of the Palelek PSA, defendant Ken Jacobson initiated discussions and applications with the Kittitas County Planning Commission, the Grant County PUD, Federal Energy Regulatory Commission, Washington State Parks & Recreation Commission, Kittitas County Water District No. 6 and other governmental agencies regarding rezoning the Vantage Bay Property and providing it with the water, sewer, roads, access and other rights necessary for its development as an approximately 300 lot vacation or second home residential plat (Ex. 103, 105, 106, 108, 109 and 117; FF 5.2).

Jacobson also began looking for investors to provide the \$15-20,000,000 in funding he expected would ultimately be needed in order to obtain the necessary governmental approvals, close the purchase of the Vantage Bay Property, pay for required road and utility enhancements, construct the physical plat improvements and amenities, and take the other steps necessary to sell the developed lots (FF 5.3). During the summer

and fall of 2005, Jacobson had extensive conversations with Respondents William (“Bill”) Cowin and George (“Skip”) Coddington, who were also familiar with the Vantage area, had significant development experience, and claimed to possess the financial wherewithal to finance a project of that magnitude (714RP 126-32).

Between October 17, 2005 and March 28, 2006, Jacobson provided Cowin and Coddington with a series of memos outlining his ideas on how the development venture should be structured among the three of them. See Ex. 107, 110, 113, 114, 116, 117, 123, 125, 130, 135 and 136. Key elements of their discussions included assignment of the Palelek PSA by Jacobson to BCSCN, Inc. (a development company owned by Cowin), in exchange for Cowin and Coddington’s commitment to fund the development of the project, allocation of approximately 1/3 of the project profits to Jacobson; BCSCBN’s payment of a \$6,500 monthly fee and provision of a leased new 2007 GMC Denali to Jacobson; and Cowin’s commitment to loan Jacobson \$400,000 for the purchase and development of a property on north side of Interstate 90 in Vantage, on which Jacobson had signed a purchase and sale agreement and planned to develop as a Motel 6 (the “Motel 6 property”). *Id.*

In December 2005, Jacobson began the process of convincing Joyce Palelek to grant consent to assignment of the Palelek PSA to

BCSCBN. It took considerable time and effort to obtain that consent, which was finally granted on April 4, 2006. See Ex. 111, 112, 115, 118, 120, 121, 126, 128, 131, 132, 133, 134, 138 and 139.

In the meantime, Jacobson needed to close his purchase of the Motel 6 property. On or about February 28, 2006 he executed a Promissory Note to Cowin (Ex. 124, hereinafter the "Motel 6 Note"), secured by a Deed of Trust against the Motel 6 property (Ex. 17 and 127). He also signed an assignment of the Palelek PSA to BCSCBN (Ex. 3 and 122), which at that point did not contain Palelek's required consent signature. As provided in Exhibits A-C thereto (Ex. 124, page 4), the Motel 6 Note was repayable out of Jacobson's share of the profits from development of the Vantage Bay project, from the proceeds of resale of the Motel 6 property after it was short platted into 3 or 4 lots, or from profits generated from the construction and operation of a Motel 6 on the property (FF 5.12). Based upon those arrangements, Cowin advanced the initial amount of \$249,500 to fund the closing of the Motel 6 property purchase (Ex. 18).

On March 28, 2006, Jacobson sent an email to Cowin and Coddington, attaching a proposed "Vantage Bay LLC Partnership Agreement" as well as an assignment agreement relating to the Palelek PSA and a financial overview and plan for the development (Ex. 135 and

136). The proposed agreements were intended by Jacobson to set forth the terms under which the Palelek PSA would be assigned by BCSCBN, Inc.; and Jacobson, Cowin and Coddington would proceed with development of the Vantage Bay property.

Cowin and Coddington reviewed Jacobson's proposed agreements, and Coddington substantially modified them into a proposed "Term Outline" document (FF 5.15), which they then discussed with Jacobson at a meeting held at Cowin's office on April 4, 2006, the same day that the Paleleks finally signed the consent to assignment of the Palelek PSA to BCSCBN (Ex. 139).² After making a number of handwritten changes, Jacobson, Cowin and Coddington signed the Term Outline at their April 4 meeting. (Ex. 21 and 137, reproduced as Appendix A hereto). As Cowin admitted at trial, the Term Outline "was not done well," likening it to a patient doing "self-surgery" rather than going to a doctor (714RP 164, lines 8-9).

The Term Outline confirmed that BCSCBN, Cowin and Coddington would "provide all the financing for the project." It went on to state that Cowin would provide "during the feasibility period, funds necessary to achieve preliminary plat approval," that BCSCBN would "attempt to obtain a loan to purchase property and start development," and

² Palelek testified that she never would have consented to assignment of the Palelek PSA to BCSCBN unless Jacobson continued to be involved in the development. 715RP 131.

that BCSCBN “will use the land and Bill Cowin’s personal financial statement to acquire (at preliminary plat approval) the necessary loan to develop the property ...” Jacobson was to act as a “Marketing/Sales consultant” and to “work with Grant County PUD and other Public entities to obtain entitlements.” Coddington was to act as a “development consultant.”

In addition to those essential commitments for project financing, the Term Outline granted the following consideration to Jacobson for his assignment of the Palelek PSA to BCSCBN: (a) 33% of the profits to be generated from development of the Vantage Bay property, to be evidenced by a note and subordinated deed of trust against that property; (b) a monthly fee of \$6,500; (c) a leased 2007 GMC Denali with insurance; and (d) the right to borrow up to \$400,000 from Cowin for the purchase and development of the Motel 6 property. For his agreement to sign financing documents and act as a development consultant, the Term Outline granted Coddington 33% of the development profits and a monthly fee of \$5,500. The remaining 34% of the profits were allocated to Cowin.

The Term Outline gave Cowin the right to terminate development of the Vantage Bay project “at any time Bill Cowin determines, in his sole discretion, that the project is not financially viable.” In the event of a non-feasibility determination, the leased Denali was required to be returned;

Jacobson and Coddington each became obligated to reimburse BCSCBN for 33% of the development costs incurred to that point; and Jacobson became entitled to exercise a first right of refusal to “re-purchase from BCSCBN, Inc. the rights to the Vantage property to include payment of all cost of project to date plus cost of Motel 6 paid by BCSCBN, Inc. to Jacobson.” That first right of refusal was added at the meeting on April 4, in response to Cowin’s insistence upon the right to declare the project not financially viable, so that Jacobson would have the ability to take the development project to someone else who was prepared to continue funding it. 716RP 85.

The Term Outline contemplated preparation of a “final agreement within the next 30 days,” but that did not occur. Counsel for Cowin and BCSCBN finally drafted a “Consulting Agreement” between BCSCBN and Jacobson six months later, in mid-October 2006 (Ex. 177), but that draft was rejected by Jacobson a few days later as not correctly confirming and fleshing out the provisions of the Term Outline (Ex. 178). No other drafts were exchanged, and Coddington never signed a consulting agreement with BCSCBN (715RP 104). Nor did he ever invest any money in the project (715RP 168). The only written agreements signed by the parties relating to development of the Vantage Bay property are the

February 2006 Motel 6 note and deed of trust (Ex. 124 and 127) and the Term Outline (Ex. 137).

Following execution of the Term Outline, the parties arranged for a six month extension of the feasibility period under the Palelek PSA (Ex. 138 and 5; 715RP 134-36 and 148-49). They then focused upon the tasks of applying for preliminary plat approval for the Vantage Bay project, and securing the water, sewer, access and other “entitlements” which would be needed in order to record the final plat and be in a position to sell its lots (714RP 70-109; 715RP 80-85).

Jacobson continued to work on those entitlements, including introducing Coddington to the various governmental agencies and other interested parties involved (Ex. 143, 144, 148, 149, 150, 165, 170, 171, 173, 181). He also began work on marketing for the project, including preparation of a marketing plan (Ex. 140 and 142), business outline (Ex. 153, 155), marketing brochure, website design and lot reservation forms (Ex. 159, 160, 162, 163, 164, 167, 168), as well as talking with and assembling a list of prospective purchasers (Ex. 193, 201). However, he never received a “predetermined plan of budgeting, purchase orders and accountability” from BCSCBN as required by the Term Outline (Ex. 137, 716RP 18). By late 2006 Jacobson had been instructed by Cowin to ramp down his marketing efforts until the design of the project was revised and

they were closer to obtaining final plat approval (Ex. 184). Cowin assigned to Coddington most of the responsibility for securing entitlements, but Jacobson continued to assist with matters such access across the Grant County PUD property located between the Vantage Bay property and the Columbia River (Ex. 187, 188, 189, 197, 198).

The Vantage Bay project received preliminary plat approval from Kittitas County on December 18, 2006 (Ex. 191). With that contingency satisfied, BCSCBN proceeded to close the purchase of the property on January 30, 2007, paying \$1.5 million down and agreeing to pay the \$1.5 million balance to Palelek in five annual installments of \$300,000 plus interest, secured by a deed of trust against the Vantage Bay property (Ex. 7, 8, 9 and 10). BCSCBN financed the downpayment through a loan from Cowin business partner Karl Hagan (714RP 187-88), who took a second deed of trust against the property to secure repayment (Ex. 12 and 13).

Following closing, BCSCBN drilled a well on the Vantage Bay property and purchased the water rights necessary to support a 300+ lot development (Ex. 32-38; 714RP 96-97 and 104-09). It purchased a second access to the property from Washington State Parks & Recreation (Ex. 47-49, 714RP 10-11), spent \$180,000+ to prepare plans for expansion of the Vantage treatment facility to accommodate the development, applied for a federal grant to fund the sewer project (Ex. 39-41, 715RP 80-

81), obtained environmental and cultural assessments of the property (Ex. 42-46), among other things.

At the beginning of September 2007, BCSCBN abruptly terminated the \$6,500 per month payments which it had been making to Jacobson as required by the Term Outline. It had provided him with no prior notification claiming that he was somehow in breach of his obligations under the Term Outline. Nor did BCSCBN provide any notice or justification of its action to Jacobson. Meanwhile, BCSCBN continued to make monthly payments to Coddington equaling or exceeding the \$5,500 fee due to him under the Term Outline (Ex. 50-53). Coddington ultimately received \$202,000 in such fees, compared to only \$110,500 paid to Jacobson. (See reformatted listing of BCSCBN development “costs” attached to this brief as Appendix B. It reflects the same information as Ex. 51 and 53, but sorted in a meaningful manner and in a legible font.)

The action below was commenced by Cowin and Coddington against Jacobson in November 2007, seeking a declaratory judgment approving BCSCBN’s unilateral termination of the \$6,500 monthly payments to Jacobson. No basis for the termination was asserted, and the plaintiffs simply alleged that a “controversy existed” as to whether BCSCBN had a continuing obligation to make the payments (CP 5).

Without specifying any particular issues, they also sought determination of the parties' other rights, duties and legal relations under that document (CP 1). Jacobson counterclaimed for recovery of the unpaid monthly amounts, and for enforcement of his other rights under the agreement (CP 9).

On June 23, 2009, shortly prior to the trial in this case, Cowin sent a letter to Jacobson and Coddington notifying them of his determination "that the Vantage Bay project is not financially viable" (Ex 54; 715RP 20-26). The letter enclosed a summary of costs allegedly incurred to that date in connection with the development, totaling \$1,079,568. It took the position that Jacobson and Coddington were each responsible for paying 33% of that amount (\$359,856) to BCSCBN by June 26, 2009.

Notwithstanding the declaration of "non-feasibility," BCSCBN continued to work on entitlements for the development, including completion of the purchase of water rights (Ex. 38; 714 RP 78-97), and pursuit of a federal grant to fund the sewer plant expansion needed to handle waste water from a 310 lot development (Ex. 41). BCSCBN also hired attorney Jeff Slothower to lobby Kittitas County for an extension of the 5 year deadline for converting a preliminary plat into final plat approval through an amendment to the Kittitas County Code, an effort which was still ongoing at the time of trial (714RP 21-23 and 57-58).

That Code amendment was approved in December 2009, with further revision in February 2010. See Appendix C attached to this brief. As a result, the Trial Court's Finding of Fact 5.24 stating that the deadline cannot be extended is no longer accurate.

Following trial, Judge Pro Tem Finkle eliminated the legal fees of the Respondents' law firm and the overpayment of monthly fees to Coddington in arriving at total project costs of \$1,041,613 (FF 5.33 and CL 5(b); Declaratory Judgment ("DJ") Section 4(b) (CP 245). However, he failed to delete other improperly claimed "costs" as discussed in Section IV.C, below. The Trial Court also determined that Jacobson had no remaining rights with respect to the Vantage Bay other than his right of first refusal to re-purchase the property and related development rights (CL 7; DJ 6; CP 250). The Trial Court provided Jacobson only 36 days in which to exercise that right and close a purchase the Vantage Bay property and related rights at a price which would have totaled nearly \$4.25 million (see Appendix C attached). CL 5(f); DJ 4(f). Jacobson filed this appeal of the Findings, Conclusions and Declaratory Judgment on September 22, 2009.

Given the real estate and lending conditions then prevailing, arranging to close a \$4.25 million purchase within 36 days was impossible and Jacobson was unable to exercise the first right of refusal. On October

28, 2009, the trial court entered a Supplemental Judgment against Jacobson,³ leaving him with nothing to show for his many years of work on the Vantage Bay development except a \$342,546 judgment debtor liability to BCSCBN. Jacobson filed an amended notice of appeal on October 30, 2009, adding the entry of the Supplemental Judgment to the issues presented on this appeal.

BCSCBN meanwhile continues to own the Vantage Bay property, without any restriction upon proceeding with its development, and without any obligation to pay or credit anything to Jacobson when it sells the property either in bulk or as platted lots.

IV. ARGUMENT

A. Standard of Review

The primary issue before the Trial Court below was the interpretation of the parties' Term Outline contract. The appellate court is entitled to independently review evidence consisting of the contents of written documents, and no deference to factual findings regarding such contents is required. Lobdell v. Sugar 'N Spice, Inc., 33 Wash.App. 881, 887, 658 P.2d 1267 (1983; In re Estate of Reilly, 78 Wash.2d 623, 654, 479 P.2d 1 (1970). Interpretation of a contract is a question of law if it

³ Although included in Appellant's Designation of Clerk's Papers, the Supplemental Judgment was not included in the Clerk's Papers submitted to the Court of Appeals. A copy is attached as Exhibit D to Appellant's Motion and Declaration to Supplement Clerk's Papers, being filed with this brief.

does not depend upon extrinsic evidence or if only one reasonable inference can be drawn from the extrinsic evidence. Save Columbia CU Committee v. Columbia Community Credit Union, 134 Wash.App. 175, 180-81, 139 P.3d 386 (2006); Tanner Electric Coop. v. Puget Sound Power & Light, 128 Wash.2d 656, 674, 911 P.2d 1301 (1996).

Otherwise, the determination of the intent of parties to a contract presents a question of fact, and the findings of fact by the Trial Court will be sustained if supported by substantial evidence. In re Riddell, 138 Wash.App. 485, 491-92157 P.3d 888 (2007). “Substantial evidence” is evidence sufficient to persuade a rational fair-minded person that the premise is true. Id.; Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wash.2d 169, 176, 4 P.3d 123 (2000).

The Trial Court’s conclusions of law are subject to de novo review by the appellate court, to determine whether they are supported by proper findings of fact. In such review, the appellate court is not bound by the Trial Court’s labels, and if a finding of fact is actually a conclusion of law or vice versa, the appellate court should treat it as such. Hegwine v. Longview Fibre Co., Inc., 162 Wash.2d 340, 353, 172 P.3d 688 (2007).

Significant portions of the Trial Court decisions and judgments were tantamount to the granting of equitable relief - fashioning contract terms and remedies which the parties had not specifically included in the

Term Outline. Whether equitable relief should be granted is a question of law, which the appellate court reviews de novo. In re Riddell, *supra* at 491. Where equitable relief is proper, the trial court has discretion in fashioning that equitable relief, subject to review for abuse of discretion. Niemann v. Vaughn Community Church, 154 Wash.2d 365, 374, 113 P.3d 463 (2005). Such review involves a determination as to whether the equitable relief was based upon tenable grounds or reasons. Harmon v. Dept. of Labor & Industries, 111 Wash.App. 920, 928, 47 P.3d 169 (2002).

The Trial Court's evidentiary rulings are subject to review for abuse of discretion. Maehren v. City of Seattle, 92 Wash.2d 480, 488, 599 P.2d 1255 (1979). Abuse of discretion requires a determination determines that no reasonable person would take the same view adopted by the trial court. Doe v. Church of Jesus Christ of Latter-Day Saints, 141 Wash.App. 407, 434-35, 167 P.3d 1193 (2007).

B. BCSCBN Lacked the Right to Terminate Monthly Fee Payments to Jacobson

As discussed above, the Term Outline was negotiated and signed on April 4, 2006 because Joyce Palelek had finally agreed to consent to the assignment of the Palelek PSA by Jacobson to BCSCBN, and the parties needed to document their rights and obligations resulting from that

assignment. Part of the consideration agreed to be provided to Jacobson for assigning the Palelek PSA was that “Ken Jacobson entity will receive a fee of \$6,500.00 per month starting on April 1, 2006.” Ex. 137. As Jacobson testified, this was part of Cowin and BCSCBN’s “buy-in” for obtaining the assignment. 716RP 71. Cowin admitted in his testimony that the period of time for which such payments would be made was not discussed by the parties prior to signing the Term Outline (714RP 164), nor was one set forth in the Term Outline. Jacobson understood that the fee would be paid for as long as the Vantage Bay project was ongoing (716RP 69-70).

At trial, Jacobson sought recovery of his \$6,500 monthly fee from September 2007 through June 2009 (when Cowin declared the project to be non-viable), a total of 22 monthly payments or \$165,000. Although no language in the Term Outline supported their contention, Cowin and BCSCBN effectively took the position that Jacobson’s independent contractor work and fee payments were terminable by Cowin “at will,” whenever Cowin decided to quit making those payments. The Trial Court essentially agreed, ruling that BCSCBN owed no further fee payments to Jacobson. CL 5(a). It justified this through a finding of fact stating “BCSCBN stopped making such payments in August 2007 because at that time the development was largely “on hold” due to the delay in obtaining

necessary entitlements and also because Cowin was dissatisfied with Jacobson's performance of the tasks he was entrusted to perform." (FF 5.30). This finding is not supported by substantial evidence and does not support the legal conclusion that Jacobson had no further right to payments.

Although Jacobson's relationship with BCSCBN was as an independent contractor, it should be analogized to an employment relationship for purposes of determining BCSCBN's termination rights. It is well established under Washington law that "An employment contract indefinite as to duration, is terminable at will by either the employee or employer. But *such a contract is terminable by the employer only for cause if* (1) there is an expressed or implied agreement to that effect or (2) *the employee gives consideration in addition to the contemplated service.*" Thompson v. St. Regis Paper Co., 102 Wash.2d 219, 233, 685 P.2d 1081 (1984) (emphasis added), citing Roberts v. Atlantic Richfield Co., 88 Wash.2d 887, 894, 568 P.2d 764 (1977). Under the "additional consideration" exception to the "at will" rule, "consideration sufficient to prevent termination of the employment at the employer's will must be in addition to the required service and must result in a detriment to the employee and a benefit to the employee." Malarkey Asphalt Co. v. Wyborney, 62 Wash.App. 495, 505, 814 P.2d 1219 (1991).

In Malarkey, Wyborney's employment was held subject to termination only "for cause," because he had given additional consideration in the form of investing money in and loaning money to the employer, and in selling an ownership interest in another business to accept his position with the employer. Id. In the present case, the consideration for Jacobson's monthly fee payments was not simply the marketing and other services he was to provide to BCSCBN after the execution of the Term Outline. Rather, the obligation to make those monthly payments arose because of the substantial detriment to Jacobson and benefit to BCSCBN agreed upon by the parties, namely Jacobson's assignment to BCSCBN of the Palelek PSA which he had worked so many years to put together. As a result, Jacobson's independent contractor relationship and right to receive the agreed \$6,500 monthly fee was terminable only "for cause," not at the whim of Bill Cowin. Only upon proof of cause for termination would BCSCBN have been excused from performing its obligations under the Term Outline. Lovric v. Dunatov, 18 Wash.App. 274, 281, 567 P.2d 678 (1977).

The evidence presented at trial simply failed to establish that BCSCBN had "cause" to terminate Jacobson's payments as of September 2007, or that Jacobson was given any notice of such cause or the opportunity to cure the breach in order to avoid termination. The trial

exhibits do not include a written notice of breach, nor did any contemporaneous document purporting to justify the September 2007 decision to stop those payments.

Cowin's assertion at trial was that "If he wasn't performing some quantifiable work for the corporation, then it didn't seem where he would be getting paid" (714RP 165, lines 17-19). He offered the self-serving testimony that he was not "satisfied" with Jacobson's work on the Vantage Bay project (714RP 190), stating that "I believe there's some exhibits to show that I was not happy." *Id.* In support of FF 5.30 on this issue, the Trial Court cited Ex. 142, 146, 173, 182 and 184.

Ex. 142 is an exchange of email between Cowin and Jacobson in early June 2006, fully 15 months before Jacobson's monthly payments were terminated. It addressed Jacobson's work on marketing materials. It is undisputed that Jacobson produced a significant amount of marketing work product in 2006 (see Ex. 140, 142, 153, 155, 159, 160, 162-64 and 167-68). It is also undisputed that Cowin radically curtailed that work in 2007, believing that it didn't make sense to spend a lot on marketing until they had something tangible to sell (Ex. 184, 714RP 192).

Ex. 146 is a mid-June 2006 exchange of email between Jacobson and Cowin, in which Jacobson requested his June fee payment and Cowin indicated that he didn't want to make further payments unless Jacobson

established the “formed entity” referenced in the second line of the Term Outline. Again, this occurred nearly 15 months before Cowin decided to quit making payments to Jacobson. Jacobson testified that he understood his “entity” to be Platypus Interactive, a “d/b/a” which he had been using for many years, which he registered with the State of Washington shortly thereafter (716RP 73-77). Although Cowin disagreed with that interpretation (714RP 193-94), the issue was not pursued further, and BCSCBN continued to issue payments to Platypus for 13 months thereafter (Ex. 51, pages 1-2, more legibly reflected in Appendix B attached). Any lack of a “formed entity” cannot be asserted as “cause” for terminating payments to Jacobson in September 2007, and substantial evidence does not support FF 5.29 or 5.30, to the extent they determine that Jacobson’s lack of a separate legal entity was a material breach of the Term Outline relied upon in terminating those payments.

Ex. 173 is an exchange of email between Cowin and Jacobson in late September 2006, more than 11 months prior to the termination of monthly payments, addressing easements to be obtained from Joyce Palelek. Jacobson did work with Palelek and her attorney to obtain the easements (Ex. 170, 171, 174 and 175), were signed by Palelek and recorded in January 2007 in connection with the closing of BCSCBN’s

purchase of the Vantage Bay property (Ex. 11). Clearly, Ex. 173 fails to establish cause for terminating payments to Jacobson eleven months later.

Ex. 182 is an exchange of emails between Cowin and Jacobson in late November 2006 regarding Jacobson's request for an advance on the "Motel 6" loan. In it, Cowin somewhat cryptically comments that "You should do more work on Vantage Bay." This apparently was meant to indicate that Jacobson working too much on Motel 6 development (714RP 194-95). However, the Term Outline said nothing about requiring Jacobson to work exclusively on Vantage Bay matters. On the other hand, his work on purchase and development of the Motel 6 property was clearly contemplated by that agreement, which states in relevant part that "Bill Cowin will assist Jacobson by co-signing on the construction and takeout loans to build the Vantage Motel 6 motel ..." It was also clearly envisioned by Exhibit C to the Motel 6 Note (Ex. 16 and page 4 of Ex. 17), which stated that the Motel 6 property would be short platted, and that when the Vantage Motel 6 was built, 50% of the profits would be used to repay the Motel 6 note. None of those steps would have been possible without Jacobson spending time on the project, and the fact that he did so was not "cause" for terminating his monthly payments in September 2007.

Finally, Ex. 184 references a point in late November 2006 when Jacobson allegedly did not respond to a request from Cowin for assistance

with some marketing binders. At most, the exhibit references a disagreement between the two men about what marketing efforts should be made at that point. Jacobson noted that Cowin had stopped work on the brochure which he had been preparing (Ex. 167-68), and that Jacobson had “outlined a detailed marketing effort when we have something to sell” (Ex. 184). As indicated above, by early 2007 Cowin also shared the view that it made little sense to spend significant time and effort on marketing until water rights and other entitlements were secured (714RP 192). Clearly, there was no factual basis for claiming in September 2007 that any lack of marketing activities by Jacobson was “cause” for terminating his monthly payments.

Finally, Cowin offered the conclusory statement that “there were other things that needed to be done, and I would ask Mr. Jacobson to do this and he would just basically stonewall me” (714RP 192). But the trial record contains no identification of any specific requests by Cowin in the period before payments were terminated, nor any refusal by Jacobson to perform them. Jacobson gave Cowin lists of marketing activities, and never received any marching orders (716RP 21-22). He wanted the “plan of budgeting” referenced in the first paragraph of the Term Outline, yet one was never provided by BCSCBN (716RP 18).

In summary, the trial record contain no substantial evidence which would support a finding that Cowin had “cause” to terminate Jacobson’s monthly payments, and such a finding was not made by the Trial Court. As a result, the Trial Court’s determination at CL 5(a) and DJ 4(a) that “Jacobson has received all monthly payments he is entitled to receive” was erroneous as a matter of law. That determination should be reversed with instructions to award \$165,000 plus statutory interest to Jacobson.

C. Recoverable Development Costs Did Not Include “Accrued Shareholder Loan Interest,” and There Was No Substantial Evidence of any “Lease” or “Insurance” Payments to Third Parties

The Term Outline (Ex. 137) granted Cowin the right to determine that the Vantage Bay project is not financially viable, and went on to provide that:

In the event Bill Cowin determines the project is not financially viable, he will prepare and present to Ken Jacobson and George Coddington a summary of all costs incurred to date in the prosecution of the development. Jacobson’s entity and Coddington’s entity each agree to reimburse BCSCBN, Inc. 33% of the costs expended to date.

The phrase “costs incurred to date in the prosecution of the development” was not defined in the Term Outline. At trial, BSCSBN contended that its development costs totaled \$1,079,568 (Plaintiff’s Trial Brief, section 3.10, CP 123), and offered Ex. 50-53 in support of their

claim. Although Jacobson does not dispute most of BCSCBN's listings, there are at least two types of alleged "costs" which were erroneously included in the \$1,041,613 total ultimately approved by the Trial Court (FF 5.33) - "accrued shareholder loan interest" and vehicle "lease" and "insurance" payments.⁴ While costs for purposes of determining "profit sharing" were defined to include "vehicles" and "interest," and Jacobson does not dispute the contention that reimbursable "costs incurred" can include vehicle costs and interest, the Term Outline clearly contemplated that such costs must *actually be paid by BCSCBN to third parties* in order to be subject to "reimbursement."

BCSCBN and Cowin borrowed money on lines of credit to fund property development costs, and the interest costs incurred on those lines, included in the \$1,041,613 in "development costs" total are not contested by Jacobson. See Appendix B prepared from Ex. 50-53, summarizing and listing payments to Charter Bank and Frontier Bank. However, there is no evidence that either BCSCBN or Cowin themselves ever loaned money to fund the development, nor is there any language in the Term

⁴ In its determination, the Trial Court excluded "legal fees and costs related to this litigation" consisting of attorneys fees and costs which respondents had incurred with the Schiffren Olson law firm (DJ 5(a)). Although not specifically noticed by the Trial Court, it's award failed to exclude as a "development cost" \$3,697 in fees paid to the Smith & Hennessey law firm for its services at a mediation conducted during this litigation, in April 2008. See Ex. 53, page 2, and the first 8 pages under the "Legal Fees" tab of that Exhibit. As noted on the face of the mediator's invoice, his fees had already been allocated between the parties, with Jacobson paying his agreed share, and there was no basis for also charging him with respondents' share as a "development cost."

Outline which treats “accrued shareholder loan interest” as a development cost chargeable to Jacobson. \$183,816 in such accrued interest “costs” are included in the Trial Court’s \$1,041,613 approved total. Again, see Appendix B.

There was no testimony offered at trial regarding the nature of this “accrued” interest, or the interest rate or principal amount used in its computation. Nor was any explanation presented to the Trial Court as to why such undefined accrued interest should constitute a “cost incurred to date in the prosecution of the development” for which Jacobson should have a 33% reimbursement obligation under the Term Outline. As argued to the Trial Court in Jacobson’s August 17, 2009 Response re Form of Judgment and Supplemental Motion for Reconsideration (CP 231), the Term Outline did not authorize BCSCBN or Cowin to charge “interest” on the development costs which they agreed to “fully fund,” in addition to any interest costs actually paid to third parties on funds borrowed to pay those costs. The Term Outline simply states that “BCSCBN, Inc. will be reimbursed all monies expended *plus interest at prime plus 2 points at time of receipt of development funds from bank (T.B.D.) for Development Loan.*” (emphasis added) No development loan was ever even applied for, much less received by BCSCBN.

As a result, the Trial Court erred in including that \$183,816 of “accrued interest” in the development costs making up part of the first right of refusal price which Jacobson was required to pay under Declaratory Judgment sections 4(b) and 4(f), and in the development costs assessed against Jacobson in the Supplemental Judgment.

Jacobson was entitled to and did receive the use of a 2007 GMC XL Denali under the provisions of the Term Outline. He does not dispute the assertion that amounts actually paid to third parties by BCSCBN for the use of that vehicle and for insurance on it should be included in the calculation of “costs incurred to date in the prosecution of the development” However, substantial evidence did not support the \$54,970 in “lease” and “insurance” costs included in the Trial Court’s \$1,041,613 development costs total.

First, BCSCBN did not offer a copy of any vehicle lease or insurance policy into evidence at trial. Their only evidence of “lease” or “insurance” costs were copies of invoices from “IGEL, Inc.” to BCSCBN, reflecting charges for “lease” and “insurance.” See the documents included under the “Automobile Payments” tab in Ex. 53.

Secondly, as shown on those invoices, IGEL has exactly the same mailing address as BCSCBN - 21828 87th Ave. SE, Suite 200, Woodinville, WA 98072 (Id.). It is owned by Bill Cowin and his wife

(716 RP 17), who are also the sole owners of BCSCBN (714RP 159). The invoices do not represent legitimate development costs paid to third parties. Rather, they reflect nothing more than Cowin paying arbitrary amounts to himself.

These invoices were never provided to Jacobson prior to respondents' Notice of ER 904 Documents by Plaintiffs and Third Party Defendants (CP 70) served shortly before trial. They charge BCSCBN nearly \$1,500 per month for the Denali "lease," two or three times what an arms length third party lease would have cost, as well as \$120 per month for "insurance," significantly more than a commercial insurer would have charged for that vehicle and a single driver. The \$50,892 total of such lease payments, for less than three years of use, is more than it would have cost to purchase the vehicle outright. There is no substantial evidence that these "costs" were actually incurred by BCSCBN through payments to arms length third parties, and it was error for the Trial Court to include them in its determination of "development costs" which Jacobson was required to pay in order to exercise his first right of refusal, or required to "reimburse" under the Term Outline and Supplemental Judgment.

These objections were in no way waived by Jacobson before the Trial Court. Jacobson objected to admission of Ex. 50-53 in his response to the ER 904 notice (CP 96-98). The objections were reiterated in Joint

Statement of Evidence (CP 105). Because of the termination of his monthly fee payments, Jacobson lacked the funds to retain legal counsel and was forced to represent himself at trial. However, he repeatedly objected to admission of the exhibits while acting pro se during trial (715RP 12-13; 716RP 5-7). The Trial Court erroneously allowed Cowin to testify about costs without admitting Ex. 50-53 (715RP 11), and the respondents rested with the admission of those exhibits unresolved (715RP 152). The issue was not finally decided until after the close of all trial testimony (716RP 94). Jacobson's objections were renewed in Jacobson's Response re Form of Judgment, pages 2-6 (CP 232-37) and in argument at the hearing on presentation of the findings, conclusions and judgment (824RP 10-12 and 24-25).

At trial, Cowin did not offer any testimony supporting an interpretation of the Term Outline to require reimbursement of these disputed costs. He also displayed a lack of knowledge regarding the specific contents of Ex. 50-53. For example, when asked whether the exhibits included invoice copies, he admitted "*I don't know. I didn't put the exhibits together.*" (715RP 41, lines 6-7) "I *assume* there is an invoice attached to every one of those and can produce it back to every check that is written listed in that list." (*Id.* at lines 23-25) (emphasis added). Jacobson's objections were raised in response to such testimony,

when he challenged the accuracy of the exhibits and the lack of foundation provided by Cowin's testimony (715RP 42).

The Trial Court ultimately ruled that Jacobson's objections went to the "weight" of the evidence rather than its "admissibility," and admitted Ex. 50-53 (716RP 94). However, evidence of "accrued shareholder loan interest" is not entitled to any weight, where the Term Outline contained no provision entitling Cowin or BCSCBN to payment of such amounts following a determination of non-viability. The Trial Court made no findings on that issue, nor did it enter any conclusions of law specifically addressing reimbursement of such alleged costs. Their inclusion in the \$1,041,613 development cost total, first right of refusal price and Supplemental Judgment represented errors of law.

Similarly, the Trial Court entered no specific findings or conclusions regarding BCSCBN's right to recover the "lease" and "insurance" payments as reimbursable development costs. It was an abuse of discretion, if not an error of law, to include those "costs" in the \$1,041,613 development cost total where there was no proof of a lease or an insurance policy, and where the payments simply represented the movement of money in arbitrary amounts from one Cowin pocket to another.

The Declaratory Judgment and Supplemental Judgment should accordingly be reversed and remanded with instructions to delete the accrued interest, lease and insurance amounts.

D. Granting Jacobson Only 36 Days to Exercise and Close a Purchase Pursuant to His Right of First Refusal Was an Abuse of Discretion by the Trial Court

The record before the Trial Court was replete with testimony regarding the depressed market for vacation home property and real estate financing prevailing at the time of the July 2009 trial. Indeed, those very factors were cited by the respondents in arguing that Cowin had acted properly in declaring development of the Vantage Bay project not financially viable. See, for example, 714RP 19-20 and 113-19; 715RP 20-26. Such conditions were also cited by the Trial Court in sustaining that determination. See FF 3.10 and especially FF 5.34 referencing the “severe ongoing recession” and “disastrous consequences for the real estate industry, ” especially for the development of recreational property in Eastern Washington, as “financing has almost completely dried up.”

On the April 4, 2006 meeting, when Cowin insisted that the Term Outline include his right to determine “in his sole discretion, that the project is not financially viable,” Jacobson insisted upon inclusion of the following handwritten language inserted at the bottom of if its first page:

Ken Jacobson will retain a first right of refusal to re-purchase from BCSCBN, Inc. the rights to the Vantage property, to include payment of all cost of project to date, plus cost of Motel 6 paid by BCSCBN, Inc. to Jacobson.

His purpose was to preserve the right to take the project to another party prepared to finance the development, if Cowin decided he was no longer willing to do so (716RP 77-87).

The Trial Court confirmed that Jacobson's first right of refusal was exercisable as a result of Cowin's non-viability determination (FF 5(f) and DJ 4(f)). However, in entering the Declaratory Judgment on August 25, 2009 (CP 242), the Trial Court rendered that right meaningless by giving Jacobson a September 30, 2009 deadline in which to exercise it and close the purchase -- a period of only 36 days. During that short period, Jacobson was expected to find new financial backers, obtain a purchase loan, secure Palelek's consent to assignment of her seller financing note and deed of trust (Ex. 9 and 10), and actually close the purchase of the property. Even the Trial Court appeared to believe that this was an unreasonable requirement: "I recognize that it may be improbable that Jacobson will arrange financing or organize investors to permit him to exercise his first right of refusal ..." (FF 5(f), last paragraph)

Prior to entry of the Declaratory Judgment, the Trial Court requested briefing on the question of establishing a deadline for

performance of a right or obligation, where the parties' contract is silent on the issue. In Plaintiffs' Post Trial Brief submitted in response to this request,⁵ they argued that where no time for performance is specifically agreed upon, a reasonable time for performance under the circumstances will be presumed as intended by the parties to the contract, citing Robinson v. Davis, 158 Wash. 556, 559, 291 P.2d 711 (1930) and other cases. Post-Trial Brief at 5-7.

The Trial Court purported to apply this rule in establishing the deadline for exercise of Jacobson's first right of refusal. CL 5(f); DJ 4(f). However, he entered no findings of fact to support the conclusion that 36 days was a "reasonable period of time under the circumstances." He simply commented that "I believe that a much shorter time for exercise is appropriate than in the case of the [June 30, 2010] Motel 6 loan discussed above" (FF 5(f), bracketed material added). "I do not believe that the property, and final determination of the central issues in this proceeding, should effectively be in suspension for more than a very limited period of time to permit Jacobson to attempt to exercise his first right of refusal."

⁵ Plaintiff's Post Trial Brief was submitted to Judge Finkle by email on July 20, 2009. See Appellant's Motion and Declaration to Supplement Clerk's Papers, Exhibit A. However, it does not appear to have ever been filed with the court below and is therefore not included in the Clerk's Papers, necessitating the Motion to Supplement in order to make the record complete. Appellant's motion also seeks to supplement the Clerk's Papers with two emails by Jacobson to Judge Finkle, sent in response to the Post-Trial Brief. See Exhibits B and C to the motion.

Id. Similar statements are included in section 4(f) of the Declaratory Judgment.

Establishing an impossibly short period of time for the exercise of Jacobson's right of first refusal was an abuse of discretion by the Trial Court. No testimony regarding the "reasonable period of time" was requested or offered at trial, nor did the Trial Court make any findings to support his selection of a 36 day period, or to specify the "circumstances" on which such findings should be based. Instead, the issue was raised and decided after trial, when it was too late for Jacobson to present any evidence. Jacobson did argue the unreasonableness of the time period in his Motion for Reconsideration filed July 31, 2009 (CP 225-26), and at the August 24, 2009 hearing on presentation of the Declaratory Judgment (824RP 8-9 and 24). However, the Trial Court refused to consider his arguments further (824RP 25).

The Trial Court's conclusions and judgment regarding the deadline for Jacobson's exercise of the first right of refusal should be reversed, and the case should be remanded for the determination of a reasonable time period for exercise.

E. The Trial Court Erred in Failing to Direct BCSCBN to Sell the Vantage Bay Property and Related Rights, Prior to the Entry of any Judgment Against Jacobson for his 33% Share of Development Costs

After granting Cowin the right to determine that the Vantage Bay development project was not financially viable, the Term Outline went on to provide as follows:

In the event Bill Cowin determines the project is not financially viable, he will prepare and present to Ken Jacobson and George Coddington a summary of all costs incurred to date in the prosecution of the development. Jacobson's entity and Coddington's entity each agree to reimburse BCSCBN, Inc. 33% of the costs expended to date. The obligation to reimburse BCSCBN, Inc. in the event the project is terminated shall be personally guaranteed by Ken Jacobson and George Coddington.

The Trial Court interpreted this language to mean that if Jacobson failed to exercise and close a purchase of the Vantage Bay property and related rights within the 36 day period allowed, it would then enter judgment against Jacobson for 33% of development costs incurred by BCSCBN (CL 5(b), DJ 4(b)). This was later done through entry of the Supplemental Judgment on October 23, 2009.

These determinations by the Court were erroneous for a number of reasons. First, the evidence established that Cowin did not "terminate" the development after giving his June 23, 2009 notice of non-viability (Ex. 54). Rather, BCSCBN continued to work on entitlements for the development, including completion of the purchase of water rights (Ex.

38; 714 RP 78-97), and pursuing a federal grant to fund the sewer plant expansion needed to handle waste water from a 310 lot development (Ex. 41). BCSCBN also hired an attorney to lobby Kittitas County for an extension of the 5 year deadline for converting a preliminary plat into final plat approval through an amendment to the Kittitas County Code, an effort which was still ongoing at the time of trial (714RP 21-23 and 57-58). Those actions are not consistent with “terminating” development and despite Jacobson’s objections (CP 227; 824RP 10), nothing in the Trial Court’s findings, conclusions or Declaratory Judgment bars Cowin and BCSCBN from proceeding with development of the property.

Second, as discussed in Section IV.C, above, the amount of development costs used to calculate the Supplemental Judgment amount was excessive, because it included costs not properly recoverable by BCSCBN.

Third, the Trial Court’s entry of judgment against Jacobson for development costs, combined with his ruling that Jacobson has no further rights with respect to the Vantage Bay property or project (CL 7; DJ 6), reflect an unreasonable and inequitable interpretation of the Term Outline. Upon determining that the project was not financially viable, BCSCBN should have terminated development efforts and sold the property and related rights in their then-current condition, for the purpose

of recouping its acquisition and development costs. Only in the event and to the extent that the proceeds of sale were insufficient to reimburse those costs should BCSCBN have been entitled to judgment for 33% of the unrecovered amount against Jacobson.

At the time the Palelek PSA was signed at a price of \$3 million, the Vantage Bay property was vacant and undeveloped. Through the efforts of the parties and the expenditure of the development costs forming the basis of the Supplemental Judgment, a preliminary plat for the property was approved by Kittitas County, water rights and access easements were secured, sewer system improvements were designed and grants applied for. According to the testimony of respondents' own witnesses, those expenditures added substantial value to the property compared with what it possessed at the time it was placed under contract (714RP 7-17 and 73-97). Yet under the Trial Court's decision, BCSCBN retains 100% of the enhance value created by those development efforts and expenditures, while Jacobson is left responsible for 33% of the costs, without any mechanism for offset or reimbursement to the extent that BCSCBN recoups its costs through sale or further development of the Vantage Bay property.

No findings by the Trial Court support this interpretation of the Term Outline language. As argued in Jacobson's July 20, 2009 email to

the trial court (Motion to Supplement Record, Exhibit C), in Jacobson's Motion for Reconsideration (CP 226) and at the August 24, 2009 hearing (824RP 9-10 and 25), it represents an unreasonable and inequitable interpretation, and an abuse of discretion by the Trial Court. The Declaratory and Supplemental Judgments should accordingly be reversed and remanded, and BSCSBN should be directed to sell the Vantage Bay property and related rights and apply the proceeds to reimbursement of costs properly recoverable under the Term Outline, before seeking any judgment for reimbursement from Jacobson.

F. The Trial Court Erred in Setting a Due Date for Payment of the Motel 6 Note, Without Also Directing Cowin to Sign the Short Plat Required to Make the Motel 6 Property Lots Legally Salable

As previously discussed above, Jacobson's purchase and development of the Motel 6 property with the proceeds from a loan by Cowin was a material element of the overall transaction between the parties. The Motel 6 note lacked a specific due date for payment. Instead, by its terms the note payable through one of the three mechanisms set forth in Exhibit C to the note (See Ex. 16 and page 4 of Ex. 17). The first of those mechanisms was as follows:

The parcel will be short platted into 3 or 4 separate parcels and either sold or leased. All net proceeds from the sale or lease of such parcels will be paid and applied to the note.

Following consideration of Plaintiff's Post-Trial Brief, the Trial Court established June 30, 2010 as a reasonable time for payment under the circumstances (CL 5(c); DJ 4(c)). Jacobson does not contest that decision, viewed in the abstract. However, it was unreasonable in light of the Court's refusal to also direct Cowin to sign the short plat mylars, a condition to recording the short plat and creating legally salable lots. The need for Cowin to sign the mylars was first raised by Jacobson in his opening statement to the Trial Court (713RP 43-44).⁶ He discussed it at length in his trial testimony in response to cross examination by Mr. Olson regarding the salability of the short plat lots. Jacobson confirmed that the only step remaining for completion of the short plat was Cowin's signature on the mylar so that they could be recorded (716RP 55-58). Then in his emailed response to Plaintiff's Post-Trial Brief, Jacobson stated:

Your Honor, Per Mr. Olson's brief, I would like to clarify the status of the Motel 6 property. The Motel 6 site is the best commercial parcel in the City of Vantage. It has taken me this long to get short plat mylars for Cowin to sign that can be filed with Kittitas County... I would like the court to direct him to sign so the three lots will then be salable and I will put them on the market.

Motion to Supplement Record, Exhibit B. The Trial Court declined to direct Cowin to sign the mylars, and he has not done so, frustrating

⁶ Because Cowin holds a deed of trust against the Motel 6 property, his signature confirming approval of the short plat is required by Kittitas County.

Jacobson's ability to sell the Motel 6 lots for the purpose of repaying the Motel 6 note. The Trial Court's findings, conclusions and Declaratory Judgment establishing a June 30, 2010 deadline for paying the Motel 6 note should accordingly be reversed, and the Trial Court should be directed to set a new deadline representing a reasonable period of time after the mylars have finally been signed by Cowin so that the short plat can be recorded.

VI. CONCLUSION

For all the reasons stated above, the Declaratory Judgment and Supplemental Judgment entered in this matter should be reversed, and the case remanded to the Trial Court for further proceedings to correct the errors made in those judgments and the findings and conclusions entered to support them.

RESPECTFULLY SUBMITTED this 18th day of March, 2010.

LASHER HOLZAPFEL
SPERRY & EBBERSON, P.L.L.C.

By: 
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Attorneys for Appellant

DECLARATION OF SERVICE

I declare under penalty of perjury of the laws of the State of Washington that on March 18, 2010, I caused to be served a copy of the Brief of Appellant upon the following, by legal messenger:

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2010 MAR 18 PM 4:09

APPENDIX A

**VANTAGE BAY
TERM OUTLINE (EX. 21 & 137)**

Vantage Bay

1.6
MOTEL 300+
13
615 -

TERM OUTLINE

Bill Cowin, as President of BCSCBN, Inc., Bill Cowin and George Coddington will provide all the financing for the project. Ken Jacobson through a to be formed entity will be retained as a Marketing /Sales consultant setting up a website working with Grant County PUD and other Public entities to obtain entitlements and George Coddington through Tate's Landing, Inc. will be retained as the development consultant reporting biweekly to Bill Cowin, President of BCSCBN. Each firm will work on a predetermined plan of budgeting, purchase orders and accountability.

The vested owner (of the 58 +- acres of the Palelek property in Vantage, Washington) will be BCSCBN, Inc, with Bill Cowin as President. Ken Jacobson and George Coddington will contract with BCSCBN, Inc. for monthly fees, expenses and a percentage of profits.

Profit Sharing Is Defined As Follows:

GROSS SALES PROCEEDS less acquisition costs, manager fees, engineering, planning, legal, advertising, accounting, guarantee fee, real estate fees, closing costs, appraisal, wages, vehicles, interest and all other costs directly attributable to acquisition, development and sale of the property.

Ken Jacobson

Ken Jacobson will receive a Note and a subordinated Deed against the property in the amount of \$1,600,000 with interest at 6%. The Note will be paid as profits are distributed from the development from Jacobson's entity's share. Ken Jacobson will sign partial or full title releases for sales as needed. Additionally, Bill Cowin will assist Jacobson by loaning Jacobson \$400,000 to purchase and develop the Motel 6 property, as well as co-signing on the construction and take out loans to build the Vantage Motel 6 provided, however, Bill Cowin's obligation in this respect is conditional upon Ken Jacobson's entity value in the Vantage Bay project being equal to the guarantee required by Bill Cowin. The obligation will be secured by Ken Jacobson personally and with his firm's interest in Vantage Bay to Bill Cowin.

Ken Jacobson entity will receive a fee of 6500 B.C. ~~(\$5,500.00)~~ per month starting on April 1, 2006

Ken Jacobson entity will receive a leased 2007 GMC XL Denali with insurance when the new model is released. At any time during the entitlement process that this project ceases to be viable in Bill Cowin's sole discretion, the vehicle will immediately be returned to the Lessor in good condition. *Ken Jacobson will retain a first right of*

Refusal to re-purchase from BCSCBN, INC. The rights to the Vantage property. To include payment of all cost of project to date, plus cost of Motel 6 paid by Jacobson to BCSCBN, INC

6/4/06

B.C.
04-03-06

Ken Jacobson's Firm Profit Sharing Percentage Will Be 33%

~~33%~~ 33%

BCSCBN, Inc will take title of the property listed on the assignment agreement(s). BCSCBN, Inc. will use the land and Bill Cowin's personal financial statement to acquire (at preliminary plat approval) the necessary loan to develop the property in phases if needed in Bill Cowin's sole discretion depending on market demand. Bill Cowin will provide during the feasibility period, funds necessary to achieve preliminary plat approval, fees, expenses, etc. through preliminary plat approval, acquisition and development. BCSCBN, Inc. will attempt to obtain a loan to purchase property and start development. BCSCBN, Inc. will be reimbursed all monies expended plus interest at prime plus 2 points. *AT TIME OF RECEIPT OF DEVELOPMENT FUNDS FROM BANK (T.B.D.) FOR DEVELOPMENT LOAN.*

B

BCSCBN, Inc. shall be paid a guarantee fee of 3% of all funds borrowed. BCSCBN, Inc.'s profit sharing percentage will be 34%

~~33%~~ 34%

George (Skip) Coddington

George Coddington will sign any and all loan, guarantee or other documents required by Homestreet Bank or bank chosen to do financing of project. George Coddington will use his financial statement to assist in acquiring (at preliminary plat approval) the necessary loan to acquire and develop the property. George Coddington entity will receive no fees, markups or compensation other than fees and expenses, for work performed on the project except as provided herein. George Coddington will receive an option to purchase 1 lot in each division.

KJP
BC

Ken Jacobson " " " " " " " " " " " "
Bill Cowin " " " " " " " " " " " "
George Coddington entity will receive a fee of \$5,500.00 per month starting on April 1, 2006.

George Coddington's Entity Profit Sharing Percentage Will Be 33%.

Bill Cowin as President of BCSCBN, Inc. may terminate the development of this project at any time Bill Cowin determines, in his sole discretion, that the project is not financially viable. In the event Bill Cowin determines the project is not financially viable, he will prepare and present to Ken Jacobson and George Coddington a summary of all costs incurred to date in the prosecution of the development. Jacobson's entity and Coddington's entity each agree to reimburse BCSCBN, Inc. 33% of the costs expended to date. The obligation to reimburse BCSCBN, Inc. in the event the project is terminated shall be personally guaranteed by Ken Jacobson and George Coddington.

WE SIGNED BELOW TO AGREE TO THIS ATTACHED AGREEMENT AS DRAFTED WITHIN THE NEXT 30 DAYS

Ken Jacobson 04/03/06

Bill Cowin 04/03/06

George Coddington 04/05/06

APPENDIX B

**BCSCBN VANTAGE BAY
DEVELOPMENT COST
SUMMARY & SORTED DETAIL LISTING**

BCSCBN Vantage Bay Development Cost Summary

Shareholder "loan interest accrual"	183,816
IGEL "lease" and "insurance"	54,970
Jacobson monthly fees	110,500
Coddington monthly fees	202,000
Washington State Parks - easements	72,928
Kittitas County plat fee	6,025
Kittitas County property taxes	10,718
Kittitas County water district	10,713
Hammond Collier engineers	167,459
Arcadia, Picatti, PLSA - well drilling	29,035
RH2 & Water Resources - water plan	24,815
ESM engineers	17,430
Todd Lolkus surveying	14,981
Northwest Geocultural	14,813
Legal fees - water	33,723
Legal fees - sewer	15,348
line of credit costs - Frontier	16,550
line of credit costs - Charter	33,281
Other costs	22,508
Total Development Costs	1,041,613

BCSCBN
Vantage Bay
Expense Detail
January 1, 2006 through June 11, 2009

Type	Date	Num	Name	Source Name	Memo	Amount	Subtotal
Check	11/01/2006		Vantage Bay	American Bankers Insurance		317.00	317.00
Check	05/22/2008	1054	Arcadia Drilling, Inc.	Arcadia Drilling, Inc.	Inv #5101	20,565.24	20,565.24
Check	01/03/2007	6100	Vantage Bay	Bill Cowin	marketing costs - Vantage Bay/Italianissimo Restaurant	206.36	
Check	04/02/2009	1159	Ketchikan Drywall Services, Inc.	Ketchikan Drywall Services, Inc.	charged on Bill's VISA card	30.19	236.55
Bill	01/28/2008	Loan 100025899	Vantage Bay	Charter Bank		7.29	
Bill	02/25/2008	100025899	Vantage Bay	Charter Bank		2,622.34	
Check	03/31/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	5,845.25	
Check	04/01/2008	1027	Vantage Bay	Charter Bank	Loan# 100025899	2,412.71	
Check	05/06/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2,058.04	
Check	06/17/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2,300.34	
Check	07/02/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2,467.33	
Check	07/31/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2,724.84	
Check	09/04/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2,820.99	
Check	09/30/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2,775.85	
Check	11/04/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2,707.32	
Check	12/23/2008	EFT	Vantage Bay	Charter Bank	Loan# 100025899	1,314.60	
Check	01/06/2009	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2.01	
Check	02/02/2009	EFT	Vantage Bay	Charter Bank	Loan# 100025899	1,027.38	
Check	03/04/2009	EFT	Vantage Bay	Charter Bank	Loan# 100025899	2,195.08	
Deposit	03/04/2009		Bill Cowin		Tsf to cover LOC interest pymt	-2,195.08	
Check	03/04/2009	EFT	Vantage Bay	Charter Bank	Duplicate payment deducted by Charter Bank in error	2,195.08	33,281.37
Check	08/20/2007	6171	Chelan County Auditor	Chelan County Auditor	Recording Fees	280.00	280.00
Check	07/18/2008		Vantage Bay	Chinook Press	Inv# 12958	303.29	303.29
Check	04/04/2007	6132	Vantage Bay	Continental Western Insurance	Vantage Bay	1,092.00	1,092.00
Check	05/08/2009	1175	Vantage Bay	Enumclaw Insurance Group		716.75	716.75
Bill	09/20/2006	Vantage 06-001	Vantage Bay	Environmental Assessment Services	Ecological Fish & Wildlife	1,457.80	
Bill	09/20/2006	Vantage 06-002	Vantage Bay	Environmental Assessment Services	Ecological Fish & Wildlife	2,212.80	3,670.60
Check	06/19/2007	6150	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design	5,364.00	
Check	08/01/2007	6162	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design	2,640.00	
Check	08/01/2007	6162	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design	1,326.00	
Check	08/01/2007	6162	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design	1,437.50	
Check	08/01/2007	6162	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design	16.00	
Check	09/12/2007	6177	ESM Consulting Engineers, LL	ESM Consulting Engineers, LLC		1,308.00	
Check	10/10/2007	6184	ESM Consulting Engineers, LL	ESM Consulting Engineers, LLC	Inv #68595 & 68596	780.28	
Check	12/03/2007	6204	ESM Consulting Engineers, LL	ESM Consulting Engineers, LLC	Inv #69978	312.00	
Check	12/20/2007	6219	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design - Teleconference with DOE; prepare well siting maps	831.00	
Check	01/25/2008	1002	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design	444.00	
Check	05/25/2008	1059	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design - Well location	210.00	
Check	09/25/2008	1115	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design - Well location	1,812.00	
Check	09/25/2008	1115	Vantage Bay	ESM Consulting Engineers, LLC	Eng plat design - Well location/mileage	44.22	
Check	03/10/2009	1142	ESM Consulting Engineers, LL	ESM Consulting Engineers, LLC	Invoice #75508	248.70	

**BCSCBN
Vantage Bay
Expense Detail
January 1, 2006 through June 11, 2009**

Type	Date	Num	Name	Source Name	Memo	Amount	Subtotal
Check	03/31/2009	1158	ESM Consulting Engineers, LL	ESM Consulting Engineers, LLC	Invoice #75729	656.00	17,429.70
Check	01/05/2006	49	Vantage Bay	Clearing	Loan fee Credit line Bill	500.00	
Check	02/17/2006	6001	Vantage Bay	Frontier Bank	ACCT # 003369302710 Bills line of credit	58.66	
Check	03/10/2006	6004	Vantage Bay	Frontier Bank	ACCT # 003369302710 Bills line of credit	155.96	
Check	04/27/2006	6012	Vantage Bay	Frontier Bank	ACCT # 003369302710 Bills line of credit	435.16	
Check	05/12/2006	6019	Vantage Bay	Frontier Bank	Loan # 3369302710	439.00	
Check	06/09/2006	6025	Vantage Bay	Frontier Bank	loan 3369302710	680.25	
Check	06/09/2006	54	Vantage Bay	Clearing	loan fee to renew loan / bill line of credit vantage	1,020.00	
Bill	06/19/2006	6029	Vantage Bay	Frontier Bank	3369302710	680.25	
Bill	07/25/2006	6049	Vantage Bay	Frontier Bank	3369302710	1,156.49	
Check	08/21/2006	????	Vantage Bay	Frontier Bank	loan 3369302710	1,421.40	
Check	09/26/2006	????	Vantage Bay	Frontier Bank	loan 3369302710 automatic withdrawa interest due	1,478.54	
Check	10/05/2006		Vantage Bay	Frontier Bank	loan 3369302710 automatic withdrawa interest due	1,430.53	
Check	11/13/2006	6092	Vantage Bay	Frontier Bank	loan 3369302710 interest due#3369302710	1,563.66	
Check	12/26/2006	6099	Vantage Bay	Frontier Bank	interest due Bill line of credit	1,629.30	
Check	01/10/2007	6117	Vantage Bay	Frontier Bank	prepaid interest	3,900.80	16,550.00
Check	06/19/2006	6030	Vantage Bay	Greg Cleveland	Indian Cultural Review	2,610.00	2,610.00
Check	07/06/2006	6038	Vantage Bay	Hammond Collier Wade Livingstone Corp	Sewer Plan Fee	5,160.36	
Bill	09/20/2006	0-12260	Vantage Bay	Hammond Collier Wade Livingstone Corp	Sewer Plan Fee	4,574.77	
Check	11/01/2006	6087	Vantage Bay	Hammond Collier Wade Livingstone Corp	Sewer Plan Fee	5,445.50	
Check	02/05/2007	6122	Vantage Bay	Hammond Collier Wade Livingstone Corp	Sewer plan fee	4,971.84	
Check	08/01/2007	6163	Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	4,246.22	
Check	08/01/2007	6163	Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	10,483.80	
Check	10/04/2007	1066 paid 2008	Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	18,505.35	
Check	10/10/2007	6186	Hammond Collier Wade Living	Hammond Collier Wade Livingstone Corp	Engineering Reports	59,188.90	
Check	12/03/2007	6205	Hammond Collier Wade Living	Hammond Collier Wade Livingstone Corp	Engineering Reports	6,249.00	
Check	12/06/2007	6221	Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	7,441.00	
Check	01/10/2008		Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	12,415.32	
Check	02/13/2008	1003	Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	6,505.01	
Check	03/11/2008	1029	Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	5,520.00	
Check	04/07/2008	1046	Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	877.50	
Check	07/08/2008	1106/1124	Vantage Bay	Hammond Collier Wade Livingstone Corp	sewer plan fee	15,874.12	167,458.69
Check	10/06/2006	6072	Vantage Bay	I.G.E.L.	Contingency	118.31	
Check	11/01/2006	6088	Vantage Bay	I.G.E.L.	Vantage Bay	1,497.21	
Check	11/01/2006	6088	Vantage Bay	I.G.E.L.	Vantage Bay	1,497.21	
Check	11/01/2006	6088	Vantage Bay	I.G.E.L.		120.00	
Check	11/01/2006	6088	Vantage Bay	I.G.E.L.		120.00	
Check	01/03/2007	6105	Vantage Bay	I.G.E.L.	vehicle lease	1,497.21	
Check	01/03/2007	6105	Vantage Bay	I.G.E.L.	vehicle lease	1,497.21	
Check	01/03/2007		Vantage Bay	I.G.E.L.	October 2006	120.00	
Check	01/03/2007		Vantage Bay	I.G.E.L.	November 2006	120.00	
Check	01/08/2007	6115	Vantage Bay	I.G.E.L.	vehicle lease	9.02	
Check	06/19/2007	6152	Vantage Bay	I.G.E.L.	vehicle lease - April 2007	1,492.24	
Check	06/19/2007	6152	Vantage Bay	I.G.E.L.	vehicle lease - May 2007	1,492.24	
Check	08/01/2007	6164	Vantage Bay	I.G.E.L.	vehicle lease - June 2007	1,492.24	
Check	11/08/2007	6203	Vantage Bay	I.G.E.L.	vehicle lease (December 2006 - March 2007; July 2007 - September 2007)	10,445.66	
Check	11/15/2007	6222	Vantage Bay	I.G.E.L.	vehicle lease - October 2007	1,492.24	

**BCSCBN
Vantage Bay
Expense Detail
January 1, 2006 through June 11, 2009**

Type	Date	Num	Name	Source Name	Memo	Amount	Subtotal
Check	12/18/2007	6222	Vantage Bay	I.G.E.L.	vehicle lease - November 2007	1,492.24	
Check	12/31/2007	1047	Vantage Bay	I.G.E.L.	vehicle lease - December 2007	1,492.24	
Check	12/31/2007	4024	Vantage Bay	I.G.E.L.	Insurance mistakenly excluded from vehicle lease invoice - December 06 through December 07 (\$120...	1,560.00	
Check	02/21/2008	1047	Vantage Bay	I.G.E.L.	vehicle lease - January 2008	1,492.24	
Check	03/28/2008	1047	Vantage Bay	I.G.E.L.	vehicle lease - February 2008	1,492.24	
Check	04/17/2008	4024	Vantage Bay	I.G.E.L.	Vehicle insurance - Jan & Feb 08	240.00	
Check	04/22/2008	1047	Vantage Bay	I.G.E.L.	vehicle lease - March 2008	1,492.24	
Check	04/22/2008	4042	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	05/30/2008	1060	Vantage Bay	I.G.E.L.	vehicle lease - April 2008	1,492.24	
Check	05/30/2008	4075	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	06/25/2008	1077	Vantage Bay	I.G.E.L.	vehicle lease - May 2008	1,492.24	
Check	06/25/2008	4115	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	07/24/2008	1090	Vantage Bay	I.G.E.L.	vehicle lease - June 2008	1,492.24	
Check	07/24/2008	4148	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	08/08/2008	1097	Vantage Bay	I.G.E.L.	vehicle lease - July 2008	1,492.24	
Check	08/08/2008	4189	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	08/22/2008	1097	Vantage Bay	I.G.E.L.	vehicle lease - August 2008	1,492.24	
Check	08/22/2008	4224	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	09/22/2008	1102	Vantage Bay	I.G.E.L.	vehicle lease - September 2008	1,492.24	
Check	09/22/2008	4263	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	10/21/2008	1118	Vantage Bay	I.G.E.L.	vehicle lease - October 2008	1,492.24	
Check	10/21/2008	4303	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	11/25/2008	1132	Vantage Bay	I.G.E.L.	vehicle lease - November 2008	1,492.24	
Check	11/25/2008	4347	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	12/23/2008	1132	Vantage Bay	I.G.E.L.	vehicle lease - December 2008	1,492.24	
check	12/23/2008	4379	Vantage Bay	I.G.E.L.	L0047	120.00	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	Jan 09	1,493.62	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	Feb 09	1,493.62	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	Mar 09	1,493.62	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	Apr 09	1,493.62	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	May 09	1,493.62	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	Jan 09	120.00	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	Feb 09	120.00	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	Mar 09	120.00	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	Apr 09	120.00	
Check	05/27/2009	1185	Vantage Bay	I.G.E.L.	May 09	120.00	54,970.25
Bill	09/20/2006	122172	Vantage Bay	Inslee, Best, Doezie & Ryder PS	Contingency	3,433.50	
Check	04/23/2007	6138	Vantage Bay	Inslee, Best, Doezie & Ryder PS	sewer plan fee	6,000.00	
Check	04/30/2007	6142	Vantage Bay	Inslee, Best, Doezie & Ryder PS	Cost of Reservation Agreement	160.66	
Check	08/01/2007	6165	Vantage Bay	Inslee, Best, Doezie & Ryder PS	sewer plan fee	1,853.99	
Check	08/01/2007	6165	Vantage Bay	Inslee, Best, Doezie & Ryder PS	sewer plan fee	532.00	
Check	09/12/2007	6179	Vantage Bay	Inslee, Best, Doezie & Ryder PS	Water District Fees	371.36	
Check	10/10/2007	6187	Vantage Bay	Inslee, Best, Doezie & Ryder PS	Inv #134263	2,996.00	15,347.51
Check	06/01/2006	6023	Vantage Bay	K C C D S	Plat Fee City/County	6,025.00	6,025.00
Check	03/11/2008		Vantage Bay	Kittitas County Treasurer	Vantage Bay	293.87	
Check	03/11/2008		Vantage Bay	Kittitas County Treasurer	Vantage Bay	269.36	
Check	10/28/2008	1109	Vantage Bay	Kittitas County Treasurer	2nd half Property Taxes - Vantage Bay	293.87	
Check	10/28/2008	1110	Vantage Bay	Kittitas County Treasurer	2nd half Property Taxes - Vantage Bay	269.35	
Check	04/29/2009	1171	Vantage Bay	Kittitas County Treasurer	1st half property taxes - Vantage Bay	9,591.36	10,717.81

**BCSCBN
Vantage Bay
Expense Detail
January 1, 2006 through June 11, 2009**

Type	Date	Num	Name	Source Name	Memo	Amount	Subtotal
Check	08/20/2007	1068 paid 2008	Vantage Bay	Kittitas County Water Dist #6	Cone Gilreath Law Offices	347.25	
Check	01/24/2008	1068	Vantage Bay	Kittitas County Water Dist #6	Cone Gilreath Law Offices	2,876.25	
Check	02/22/2008	1068	Vantage Bay	Kittitas County Water Dist #6	Cone Gilreath Law Offices	1,663.69	
Check	03/19/2008	1068	Vantage Bay	Kittitas County Water Dist #6	Valera & Associates Engineering Services - Facility Plan	1,108.76	
Check	03/25/2008	1068	Vantage Bay	Kittitas County Water Dist #6	Cone Gilreath Law Offices	971.35	
Check	04/28/2008	1068	Vantage Bay	Kittitas County Water Dist #6	Cone Gilreath Law Offices	48.75	
Check	08/29/2008	1107	Vantage Bay	Kittitas County Water Dist #6	Cone Gilreath Law Offices	267.00	
Check	05/22/2008	1057	Kittitas County Water Dist. #3	Kittitas County Water Dist. #3	Vantage Bay	60.00	
Check	10/10/2007	6188	Kittitas Water District No. 6	Kittitas Water District No. 6	sewer/water	2,829.55	10,172.60
Check	10/18/2007	6193	Kittitas Public Health Department	Kittitas Public Health Department	Well Inspection	187.50	187.50
Check	03/23/2006	6006	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Vantage attorney fees to date	862.00	
Check	06/19/2006	6033	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower		320.00	
Check	07/06/2006	6042	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Water Plan Fee	583.26	
Check	07/25/2006	6050	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Water Plan Fee	70.00	
Bill	09/20/2006	70295	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Water Plan Fee	320.00	
Check	11/01/2006	6089	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Water Plan Fee	221.08	
Check	01/03/2007	6106	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower		61.31	
Check	03/11/2009	1148	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Review preliminary plat approval	56.25	
Check	04/02/2009	1163	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Plat Extensions	533.25	
Check	05/08/2009	1177	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Vantage Bay - review and revise easements	281.77	
Check	05/27/2009	1183	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Vantage Bay - Work plat extension language	202.50	
Check	05/27/2009	1183	Vantage Bay	Lathrop, Winbauer, Harrel, Slothower	Kittitas County Auditor - Easement Filing Fee	63.00	3,574.42
Check	02/29/2008	1009	Vantage Bay	McKee Consulting LLC		37.50	
Check	04/30/2008	1062	Vantage Bay	McKee Consulting LLC		262.50	
Check	05/31/2008	1063	Vantage Bay	McKee Consulting LLC		420.00	
Check	06/30/2008	1080	Vantage Bay	McKee Consulting LLC		280.00	
Check	05/08/2009	1178	Vantage Bay	McKee Consulting LLC	Inv #313	20.00	1,020.00
Check	01/03/2007	6111	Vantage Bay	Northwest Geocultural Consulting	Indian cultural review	14,813.02	14,813.02
Check	01/31/2006	3206	Vantage Bay	Peterson Law Office	Water Plan Fee	234.00	
Check	05/12/2006	6018	Vantage Bay	Peterson Law Office	Water Plan Fee	1,011.61	
Check	11/01/2006	6090	Vantage Bay	Peterson Law Office	Water Plan Fee	3,830.92	
Check	02/05/2007	6123	Vantage Bay	Peterson Law Office	water plan fee	4,340.00	
Check	02/05/2007	6124	Vantage Bay	Peterson Law Office	water plan fee	2,040.00	
Check	04/30/2007	6144	Vantage Bay	Peterson Law Office	water plan fee	180.00	
Check	04/30/2007	6144	Vantage Bay	Peterson Law Office	water plan fee	1,860.00	
Check	04/30/2007	6144	Vantage Bay	Peterson Law Office	water plan fee	2,680.00	
Check	06/19/2007	6153	Vantage Bay	Peterson Law Office	water plan fee	160.00	
Check	06/19/2007	6153	Vantage Bay	Peterson Law Office	water plan fee	1,700.00	
Check	09/12/2007	6180	Vantage Bay	Peterson Law Office	Legal Fees	2,480.00	
Check	10/10/2007	6191	Vantage Bay	Peterson Law Office	Legal Fees/Water Transfer Fees	240.00	
Check	10/31/2007	6197	Vantage Bay	Peterson Law Office	Legal Fees/Water Transfer Fees	460.00	
Check	12/14/2007	6226	Vantage Bay	Peterson Law Office	water plan fee	3,000.00	
Check	02/07/2008	1006	Vantage Bay	Peterson Law Office	water plan fee	320.00	
Check	02/29/2008	1034	Vantage Bay	Peterson Law Office	review preliminary plat approval	580.00	
Check	05/13/2008	1070	Vantage Bay	Peterson Law Office	Emails Kiez & Steve	20.00	
Check	05/22/2008	1055	Peterson Law Office	Peterson Law Office	Inv #399 & Inv 46965	297.00	
Check	06/06/2008	1082	Vantage Bay	Peterson Law Office	Telephone conversation with Skip; emails	69.00	

BCSCBN
Vantage Bay
Expense Detail
January 1, 2006 through June 11, 2009

Type	Date	Num	Name	Source Name	Memo	Amount	Subtotal
Check	06/30/2008	1082	Vantage Bay	Peterson Law Office	Emails to Steve; email ROE drafts	161.00	
Check	08/07/2008	1119	Vantage Bay	Peterson Law Office	Review hydrologic report	207.00	
Check	10/03/2008	1119	Vantage Bay	Peterson Law Office	TC DOE, TC Steve, TC Skip	391.00	
Check	10/14/2008	1119	Vantage Bay	Peterson Law Office	TC Steve msg, TC Skip msg	46.00	
Check	01/14/2009	1146	Vantage Bay	Peterson Law Office	TC Steve msg, TC Skip msg	2,024.00	
Check	03/16/2009	1155	Peterson Law Office	Peterson Law Office	Inv #577,638,665	1,564.00	
Check	05/08/2009	1176	Peterson Law Office	Peterson Law Office	Inv #723	253.00	30,148.53
Check	06/02/2008	1094*	Picatti Bros. Inc.	Picatti Bros. Inc.	Prepare site; pull existing pump; flow test well	4,216.31	
Check	07/31/2008	1094	Vantage Bay	Picatti Bros. Inc.	Finance charge	63.24	4,279.55
Check	04/06/2006	6011	Vantage Bay	Platypus Creative	Consulting fee	6,500.00	
Check	05/18/2006	6020	Vantage Bay	Platypus Creative	Consulting fee	6,500.00	
Check	06/19/2006	6031	Vantage Bay	Ken Jacobson	Consulting fee	6,500.00	
Check	07/07/2006	6039	Vantage Bay	Ken Jacobson	Consulting fee	6,500.00	
Check	07/25/2006	6051	Vantage Bay	Platypus Creative	Consulting fee	6,500.00	
Check	09/07/2006	6058	Vantage Bay	Platypus Creative	Consulting fee	6,500.00	
Check	10/19/2006	6074	Vantage Bay	Platypus Creative	Consulting fee	6,500.00	
Check	11/20/2006	6093	Vantage Bay	Platypus Creative	Consulting fee	6,500.00	
Check	12/04/2006	6095	Vantage Bay	Platypus Creative	Consulting fee	6,500.00	
Check	01/03/2007	6108	Vantage Bay	Platypus Creative	Sales Fee	6,500.00	
Check	02/05/2007	6121	Vantage Bay	Platypus Creative	sales fee	6,500.00	
Check	03/06/2007	6126	Vantage Bay	Platypus Creative	sales fee	6,500.00	
Check	04/04/2007	6134	Vantage Bay	Platypus Creative	sales fee	6,500.00	
Check	04/30/2007	6145	Vantage Bay	Platypus Creative	sales fee	6,500.00	
Check	06/07/2007	6148	Vantage Bay	Platypus Creative	sales fee	6,500.00	
Check	06/19/2007	6154	Vantage Bay	Platypus Creative	sales fee	6,500.00	
Check	08/01/2007	6167	Vantage Bay	Platypus Creative	sales fee	6,500.00	110,500.00
Check	10/10/2007	6190	PLSA Engineering & Surveying	PLSA Engineering & Surveying	Well	1,250.00	
Check	12/19/2007	6224	Vantage Bay	PLSA Engineering & Surveying	Write water system plan; monitor & log test holes; consultations	1,800.00	
Check	12/26/2007	6213	PLSA Engineering & Surveying	PLSA Engineering & Surveying	Well	420.00	
Check	01/09/2008		Vantage Bay	PLSA Engineering & Surveying	Groundwater research; conference calls	300.00	
Check	02/06/2008	1004	PLSA Engineering & Surveying	PLSA Engineering & Surveying		420.00	4,190.00
Check	01/02/2008	1007	RH2 Engineering, Inc.	RH2 Engineering, Inc.	Water Plan Fee	556.00	
Check	02/11/2008	1108	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	1,162.50	
Check	03/10/2008	1108	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	237.00	
Check	05/12/2008	1071	RH2 Engineering, Inc.	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	316.00	
Check	06/11/2008	1083	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	3,592.50	
Check	07/03/2008	1108	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	2,113.28	
Check	08/15/2008	1108	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	6,960.80	
Check	08/15/2008	1108	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	1,106.00	
Check	08/15/2008	1108	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	70.00	
Check	09/11/2008	1108	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	1,931.09	
Check	09/11/2008	1108	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	695.00	
Check	10/16/2008	1127	Vantage Bay	RH2 Engineering, Inc.	Water Plan Fee - Hydrogeologic & water rights evaluation	910.58	
Check	03/16/2009	1154	RH2 Engineering, Inc.	RH2 Engineering, Inc.	Invoice #48573, 48869	1,851.26	21,502.01
Check	01/03/2007	6110	Vantage Bay	Schiffrin Olson Schlemlein & Hopkins		585.00	
Check	11/30/2007	6215	Vantage Bay	Schiffrin Olson Schlemlein & Hopkins	Vantage Bay	5,440.00	

BCSCBN
Vantage Bay
Expense Detail
January 1, 2006 through June 11, 2009

Type	Date	Num	Name	Source Name	Memo	Amount	Subtotal
Check	12/03/2007	6206	Schiffirin Olson Schlemlein & H	Schiffirin Olson Schlemlein & Hopkins		1,080.00	
Check	12/26/2007	6215	Schiffirin Olson Schlemlein & H	Schiffirin Olson Schlemlein & Hopkins	VOID:	0.00	
Check	12/31/2007	6227	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	813.00	
Check	01/25/2008	1008	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	480.00	
Check	02/25/2008	1035	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	8,760.00	
Check	03/25/2008	1049	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	1,201.00	
Check	05/25/2008	1065	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	1,231.00	
Check	06/25/2008	1084	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	1,500.00	
Check	07/25/2008	1099	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	787.00	
Check	08/25/2008	1105	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	2,250.00	
Check	09/25/2008	1128	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	570.00	
Check	03/11/2009	1151	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Invoice #15	750.00	
Check	04/02/2009	1162	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	1,890.00	
Check	04/23/2009	1167	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	1,830.00	
Check	05/28/2009	1187	Vantage Bay	Schiffirin Olson Schlemlein & Hopkins	Vantage Bay	788.25	29,955.25
Check	06/20/2008	1085	Vantage Bay	Smith & Hennessey PLLC	Cowin & Coddington v Jacobson, et al. (Mediation)	3,697.57	3,697.57
Check	04/27/2006	6015	Vantage Bay	Tate's Landing Development	Sales Fee	8,000.00	
Check	07/06/2006	6034	Vantage Bay	Tate's Landing Development	Consulting fee	8,000.00	
Check	07/25/2006	6044	Vantage Bay	Tate's Landing Development	Consulting fee	8,000.00	
Check	09/07/2006	6057	Vantage Bay	Tate's Landing Development	Consulting fee	8,000.00	
Check	09/26/2006	6069	Vantage Bay	Tate's Landing Development	Consulting fee	8,000.00	
Check	01/03/2007	6109	Vantage Bay	Tate's Landing Development	sales fee	8,000.00	
Check	02/05/2007	6122	Vantage Bay	Tate's Landing Development	sales fee	8,000.00	
Check	03/06/2007	6127	Vantage Bay	Tate's Landing Development	consultant fee	8,000.00	
Check	04/04/2007	6135	Vantage Bay	Tate's Landing Development	Sales fee	8,000.00	
Check	04/30/2007	6147	Vantage Bay	Tate's Landing Development	sales fee	8,000.00	
Check	06/07/2007	6149	Vantage Bay	Tate's Landing Development	consultant fee	8,000.00	
Check	06/19/2007	6155	Vantage Bay	Tate's Landing Development	sales fee	8,000.00	
Check	07/12/2007	6157	Vantage Bay	Tate's Landing Development	consultant fee	8,000.00	
Check	08/01/2007	6168	Vantage Bay	Tate's Landing Development	sales fee	8,000.00	
Check	10/31/2007	6199	Vantage Bay	Tate's Landing Development	consultant fee	5,000.00	
Check	12/03/2007	6207	Vantage Bay	Tate's Landing Development	consultant fee	5,000.00	
Check	12/26/2007	6216	Vantage Bay	Tate's Landing Development	consultant fee	5,000.00	
Check	12/31/2007	6229	Vantage Bay	Tate's Landing Development		4,000.00	
Check	03/04/2008	1001	Vantage Bay	Tate's Landing Development		4,000.00	
Check	04/01/2008	1036	Vantage Bay	Tate's Landing Development		8,000.00	
Check	05/06/2008	1044	Vantage Bay	Tate's Landing Development		4,000.00	
Check	05/30/2008	1058	Vantage Bay	Tate's Landing Development		5,500.00	
Check	07/01/2008	1074	Vantage Bay	Tate's Landing Development		5,000.00	
Check	07/30/2008	1088	Vantage Bay	Tate's Landing Development		5,500.00	
Check	08/19/2008	1096	Vantage Bay	GSC Development, Inc.		5,500.00	
Check	09/29/2008	1100	Vantage Bay	GSC Development, Inc.		5,500.00	
Check	10/28/2008	1117	Vantage Bay	GSC Development, Inc.		7,000.00	
Check	11/30/2008	1130	Vantage Bay	GSC Development, Inc.		7,000.00	
Check	12/31/2008	1131	Vantage Bay	GSC Development, Inc.		7,000.00	
Check	01/27/2009	1138	Vantage Bay	GSC Development, Inc.		7,000.00	
Check	03/10/2009	1141	Vantage Bay	GSC Development, Inc.	Invoice #155	8,000.00	210,000.00
Check	06/01/2006	6022	Vantage Bay	Todd Lolkus Land Surveying	Survey/Topo	5,040.00	
Check	07/06/2006	6045	Vantage Bay	Todd Lolkus Land Surveying	Eng Plat Submittal	6,597.51	

**BCSCBN
Vantage Bay
Expense Detail
January 1, 2006 through June 11, 2009**

Type	Date	Num	Name	Source Name	Memo	Amount	Subtotal
Check	11/01/2006	6091	Vantage Bay	Todd Lolkus Land Surveying	Eng on site	3,343.10	14,980.61
Check	07/06/2006	6047	Vantage Bay	Transportation Engineering NW	Traffic Study	3,990.00	3,990.00
Check	05/22/2008	1051	Vantage Bay	Tueffers, Guckian & Gamon, PLLC		2,361.00	
Check	03/11/2009	1144	Vantage Bay	Tueffers, Guckian & Gamon, PLLC	Invoice #2067	741.00	
Check	04/02/2009	1165	Vantage Bay	Tueffers, Guckian & Gamon, PLLC	Vantage Bay	825.00	
Check	05/08/2009	1180	Tueffers, Guckian & Gamon, F	Tueffers, Guckian & Gamon, PLLC	Vantage Bay	652.00	
Check	05/27/2009	1186	Vantage Bay	Tueffers, Guckian & Gamon, PLLC	Vantage Bay	350.00	4,929.00
Check	01/29/2008	6230	Vantage Bay	Washington State Parks and Recreation	Partial pymt for easement at Gingko/Wanapum State Park	35,000.00	
Check	03/11/2009	1143	Washington State Parks and F	Washington State Parks and Recreation	Easement between parks and plat	30,000.00	
Check	07/25/2006	6053	Vantage Bay	Washinton State Parks Commission	State Fees	7,928.00	72,928.00
Check	02/05/2007	6125	Vantage Bay	Water Resources Engineering	water plan fee	3,312.50	3,312.50
General Journal	12/31/2007	110761	Vantage Bay	Vantage Bay	To record 2006 interest on Shareholder loan for Vantage Bay	15,087.35	
General Journal	12/31/2007	110761	Vantage Bay	Vantage Bay	To record 2007 interest on Shareholder loan for Vantage Bay	47,890.46	
General Journal	01/01/2008	110786	Vantage Bay	Vantage Bay	Jan 08 interest accrual	3,579.76	
General Journal	02/01/2008	110787	Vantage Bay	Vantage Bay	Feb 08 interest accrual	4,982.25	
General Journal	03/01/2008	110788	Vantage Bay	Vantage Bay	Mar 08 interest accrual	5,054.50	
General Journal	04/01/2008	110789	Vantage Bay	Vantage Bay	Apr 08 interest accrual	871.29	
General Journal	05/01/2008	110790	Vantage Bay	Vantage Bay	May 08 interest accrual	10,396.90	
General Journal	06/01/2008	110791	Vantage Bay	Vantage Bay	June 08 interest accrual	5,846.06	
General Journal	07/01/2008	110809	Vantage Bay	Vantage Bay	July 08 interest expense on shareholder loan	10,377.11	
General Journal	08/01/2008	110810	Vantage Bay	Vantage Bay	Aug 08 interest on shareholder loan	4,553.74	
General Journal	09/01/2008	110811	Vantage Bay	Vantage Bay	Sept 08 interest on shareholder loan	10,278.06	
General Journal	10/01/2008	110812	Vantage Bay	Vantage Bay	Oct 08 interest on shareholder loan	2,487.26	
General Journal	11/01/2008	110813	Vantage Bay	Vantage Bay	Nov 08 interest on shareholder loan	10,884.70	
General Journal	12/01/2008	110840	Vantage Bay	Vantage Bay	Dec 08 Interest accrual	8,142.61	
General Journal	01/01/2009	110841	Vantage Bay	Vantage Bay	Jan 09 interest accrual	1,765.91	
General Journal	02/01/2009	110842	Vantage Bay	Vantage Bay	Feb 09 interest accrual	11,573.61	
General Journal	03/01/2009	110854	Vantage Bay	Vantage Bay	Mar 09 interest accrual - S/H loan	10,492.69	
General Journal	04/01/2009	110855	Vantage Bay	Vantage Bay	Apr 09 interest accrual - S/H loan	1,868.32	
General Journal	05/01/2009	110856	Vantage Bay	Vantage Bay	May 09 interest accrual	9,479.49	
General Journal	06/01/2009	110857	Vantage Bay	Vantage Bay	June 09 interest accrual	8,204.28	183,816.35
TOTAL "EXPENSES" AND "WIP"						1,079,568.67	1,079,568.67
less Coddington "over payment"						-8,000.00	-8,000.00
less Schiffrin Olson billings						-29,955.25	-29,955.25
ADJUSTED TOTAL "EXPENSES" AND "WIP"						1,041,613.42	1,041,613.42
33% OF ADJUSTED TOTAL						343,732.43	

APPENDIX C

**KITTITAS COUNTY CODE
SECTION 16.12.250
AS AMENDED BY
ORDINANCE 2010-02**

VII PRELIMINARY APPROVAL**16.12.240 Development authorization.**

Approval of the preliminary plat shall constitute authorization for the subdivider to develop the subdivision's facilities and proceed with design of improvements in strict accordance with standards established by this title and any conditions imposed by the board. Design approval by the county public works director shall be obtained prior to commencement of construction of subdivision improvements. (Ord. 2005-31, 2005)

16.12.250 Expiration.

A final plat meeting all requirements of this chapter shall be submitted to the board for approval within five years of the date of preliminary plat approval. Failure to do so will result in the preliminary plat being expired and no longer valid.

No further action is necessary regarding an application once the preliminary plat has expired pursuant to this chapter.

Any applicant who files a written request with the administrator within 30 days before the expiration date, showing that the applicant has attempted in good faith to submit the final plat within the time period and that the associated fees are paid, shall be granted a one-year extension. Such an extension can be requested and granted five times. (Ord. 2010-02, 2010; Ord. 2005-31, 2005)

- O-2009-2512/22/2009 Amends Title 20 Kittitas County Comprehensive Plan for the Purpose of Compliance with Order Number 07-01-004c of the Eastern Washington Growth Management Hearings Board and as Part of the 2009 Annual Comprehensive Plan Amendment Cycle (Special. Amends §§ 14.08.295 Recreational vehicles, 14.08.310 Standards for shallow flooding areas (AO Zones), 15.04.090 Flexible thresholds for categorical exemptions, 15A.12.010 State permit coordination, 16.09.010 Purpose and Intent, 16.09.020 Uses Permitted, 16.09.030 Criteria, 16.09.080 Process for Approval, 16.09.090 Public Benefit Rating System, 16.09.100 Definitions, 17.08.261 Firing ranges, 17.14.010 Purpose and intent, 17.14.020 Uses permitted - On-site, 17.20.110 Conditional uses, 17.22.100 Conditional uses, 17.28.130 Conditional uses, 17.28A.130 Conditional uses, 17.29.030 Conditional uses, 17.29.020 Uses permitted, 17.29.030 Conditional uses, 17.29.040 Lot size required, 17.31.030 Conditional uses, 17.37.020 Definitions, 17.37.040 Applications/approvals required for new master planned resorts, 17.56.030 Conditional uses, 17.57.030 Conditional uses. Adds §§ 17.08.035 Agriculture Study Overlay Zone, 17.08.063 Amenity funds, 17.08.165 Commercial activities associated with agriculture, 17.08.183 Conservation easement, 17.08.187 Conservation or resource values, 17.08.199 Development right, 17.08.324 Interlocal agreement, 17.08.462 Receiving site, 17.08.487 Sending site, 17.08.485 Shooting range, 17.08.542 Transfer of development rights (TDR), 17.08.543 TDR certificate, 17.08.544 TDR certificate letter of intent, 17.08.545 TDR credit, 17.08.546 TDR program, 17.08.547 TDR sending site application, 17.14.030 Uses permitted - Off-site, 17.37.050 Applications/approvals required for existing resorts. Adds Chapters 15A.13 Site Plan Review, 17.13 Transfer of Development Rights.
- O-2010-0101/19/2010 Adds Chapter 2.55 Public Records Disclosure (2.55)
- O-2010-0202/16/2010 Amends Ordinance 2009-25 for scrivener's errors (Amends §§ 16.12.250 Expiration, 17.13.060 TDR Documentation of Restrictions, 17.29.030 Conditional uses, 17.92.020 Building permits. Adds §§ 14.04.045 Recreational Vehicles and Park Model Trailers, 14.04.046 Other factory built dwellings. Deletes §§ 17.08.261 Firing range. Renumbered §§ 17.08.061 Animal boarding facility as 17.08.067, 17.08.323 Intervening ownership as 17.08.327. Adds Chapters 17.61B Small Wind Energy Systems.

**COMMISSIONERS' MINUTES
KITITAS COUNTY, WASHINGTON
AGENDA SESSION**

TUESDAY

10:00 A.M.

FEBRUARY 16, 2010

Board members present: Chairman Mark McClain; Vice-Chairman Paul Jewell and Commissioner Alan Crankovich.

Others: Julie Kjorsvik, Clerk of the Board; Lisa Young, Human Resource Manager; Cathy Bambrick, Public Health Administrator; Patti Johnson, Solid Waste Director; Deanna Panattoni, Treasurer; Clayton Myers, Undersheriff; Brent Bottoms, Deputy Prosecutor; Stephanie Happold, Deputy Prosecutor; William Holmes, Probation Services Director; Michael Stafford, Assistant JCA/Probation Manager; Matt Anderson, Fair Program Director; Kelly Carlson, Administrative Assistant/Airport Manager; Kathy Jurgens, Finance System Manager; Marsha Weyand, Assessor; Neil Caulkins, Deputy Prosecutor; Jaime Morgen, Juvenile Probation Counselor; Superior Court Judge Scott Sparks and approximately six members of the public.

CALL TO ORDER

Chairman McClain called the meeting to order.

PLEDGE OF ALLEGIANCE

Chairman McClain led the Pledge of Allegiance.

INTRODUCTION OF NEW COUNTY EMPLOYEES - NONE

PROCLAMATIONS - NONE

AWARDS & RECOGNITIONS

William Holmes, Probation Services Director, commented on Jaime Morgen's successful completion of requirements as a Quality Assurance Specialist. The Board of County Commissioners handed out a Certificate of Achievement signed by Jack McGibbon, Washington State Risk Assessment Coordinator for the Washington Association of Juvenile Court Administrators.

APPROVAL OF AGENDA

Chairman McClain announced Item B under the Consent Agenda had been moved to Board Discussion & Decision; three items had been added under Administrative Matters and a possible Executive Session at the end of

Jacobson Right of Refusal Payoff Estimate

Total "Development Costs"	1,041,641.00
Purchase of Water Rights	54,523.81
Motel 6 Loan Principal	335,000.00
Motel 6 Loan Interest	104,464.83
Closing Costs Paid at Palelek Closing Jan. '07	69,433.90
Palelek Principal & Interest Paid From BCSCBN Funds	735,000.00
Karl Hagen Loan Principal Used for Palelek Downpayment	1,500,000.00
Karl Hagen Loan Interest Paid and Accrued	360,000.00
Property Taxes Paid by BCSCBN	<u>10,717.81</u>
Subtotal of Above	4,210,781.35
Half of Excise Tax on Above at 1.78%	37,475.95
Misc. Closing Costs	<u>1,000.00</u>
Estimate of Cash Needed - If Palelek Balance Assumed	4,249,257.30
Principal and Interest Balance Due Palelek	<u>930,000.00</u>
Estimate of Cash Needed - If Palelek Paid in Full	5,179,257.30

Note: Above Amounts Estimated as of 9-30-2009

APPENDIX D

**JACOBSON FIRST RIGHT OF REFUSAL
PRICE ILLUSTRATION**

Jacobson Right of Refusal Payoff Illustration

Total "Development Costs"	1,041,641.00
Purchase of Water Rights	54,523.81
Motel 6 Loan Principal	335,000.00
Motel 6 Loan Interest	104,464.83
Closing Costs Paid at Palelek Closing Jan. '07	69,433.90
Palelek Principal & Interest Paid From BCSCBN Funds	735,000.00
Karl Hagen Loan Principal Used for Palelek Downpayment	1,500,000.00
Karl Hagen Loan Interest Paid and Accrued	360,000.00
Property Taxes Paid by BCSCBN	<u>10,717.81</u>
Subtotal of Above	4,210,781.35
Half of Excise Tax on Above at 1.78%	37,475.95
Misc. Closing Costs	<u>1,000.00</u>
Estimate of Cash Needed - If Palelek Balance Assumed Principal and Interest Balance Due Palelek	4,249,257.30
	<u>930,000.00</u>
Estimate of Cash Needed - If Palelek Paid in Full	5,179,257.30

Note: Above Amounts Estimated as of 9-30-2009