

68304-7

68304-7

No. 68304-7

**COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON**

CITY OF MAPLE VALLEY, a Washington Municipality,

Appellant,

v.

BRUCE LAURENCE DISEND and CLAUDIA JEAN DISEND, husband
and wife, and KENYON DISEND, PLLC, a Washington Professional
Limited Liability Company,

Respondents.

2012 APR 17 11 2:10
COURT OF APPEALS
STATE OF WASHINGTON

APPELLANT'S REPLY BRIEF

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ORIGINAL

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I. INTRODUCTION

The Law Firm's formulation would require that any time a new Seattle City Attorney is elected, he or she must review each and every City of Seattle ordinance and resolution to determine anew their legality. In other words, successor counsel **must** distrust each and every act of predecessor counsel. Such a position, if accepted, would work a radical change in the law and vastly increase the legal expenses of this State's municipalities.

The Law Firm's sole reliance on *Cawdrey v. Hanson Baker Ludlow Drumheller, P.S.*, 129 Wn. App. 810, 120 P.3d 605 (2005) is misplaced. There was nothing in the 2003 Ordinance or the 2005 Resolution that would cause a reasonable municipality such as Maple Valley to, in any way, question its legality, where both had been approved by their lawyers, the Law Firm. Indeed, the Law Firm helped implement the logistics of the 2005 Resolution.

The statute of limitations does not simply begin running at the precise time of the lawyer's negligence. This position was resoundingly rejected in *Peters v. Simmons*, 87 Wn.2d 400, 406, 552 P.2d 1053 (1976). Rather, there must be a triggering event, something that would lead a reasonable client (in the words of *Cawdrey*) to "know the facts supporting **each** essential element of the cause of action before the limitations periods

begin to accrue.” *Cawdrey, supra*, ¶ 15. [Emphasis added]. Here, a reasonable jury could easily find that no such triggering event alerted Maple Valley’s lay city council any earlier than October 2010.

Nor do the undisputed facts, construed most favorably to Maple Valley, as they must be, show anything to cause the new City Attorney, Christy Todd, to question her predecessors’ work before October 2010. Indeed, both the public works director, Mr. Stephen Clark and Mr. Dan Matson, were working *in 2009 and 2010* to implement what they had every reason to believe were the valid 2003 Ordinance and 2005 Resolution. [CP 367-385 and 545: lines 20-23]. Reasonable minds can and do differ on what could cause Maple Valley and its City Attorney to question the facial validity of either the 2003 Ordinance or the 2005 Resolution. This Court, reviewing this matter *de novo*, should reach the same conclusion.

In sum, there was no triggering event before October 2010—and *certainly* there was no triggering event before June 7, 2008, *i.e.*, three years before this action was filed. Rather, Maple Valley was proceeding based on the appropriate belief that the Law Firm had performed properly and that the 2003 Ordinance and 2005 Resolution were valid. This Court should reverse and remand for trial.

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II. ARGUMENT

A. The Facts Establish That There Was Nothing to Alert Maple Valley of the Legal Infirmities in the 2003 Ordinance and 2005 Resolution Before June 7, 2008.

All of the evidence before this Court and the trial court, and all reasonable inferences from that evidence, are construed most favorably to Maple Valley. *Mountain Park Home Owners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994). If, as in this case, reasonable persons can reach different conclusions as to material disputed facts, then summary judgment must be denied. Summary judgment is proper, “only if reasonable persons could reach only one conclusion from all of the evidence.”. *Cawdrey, supra* ¶12.

The parties agree that the question at issue is when Maple Valley knew or in the exercise of reasonable care and diligence should have known **all** of the **facts** giving rise to this cause of action. Under the Law Firm’s formulation, in theory, every legal error is potentially discoverable at the time the error is committed, because as soon as the error is committed, all of the relevant “facts” are supposedly knowable. [BR 21]. However, if that formulation were adopted, it would eviscerate the discovery rule and the reasons behind it as enunciated by our Supreme Court almost forty years ago: “the application of [the Law Firm’s theory]

ignores the fact that ultimately the client has little choice but to rely on the skill, expertise, and diligence of counsel.” *Peters*, *supra*, p. 406.

One of the facts in this case is the legal invalidity of the 2003 Ordinance and 2005 Resolution, and Law Firm points to nothing before October 2010 that would have alerted a diligent municipality to that invalidity and made it question its former counsel’s advice. Indeed, the unpersuasive reasoning of Law Firm is highlighted by the fact that there has yet to be a judicial determination of the invalidity of the 2003 Ordinance and 2005 Resolution. The Law Firm’s position is grounded on the premise of invalidity even though it also argues for its validity.

Here, it is undisputed that Ms. Todd first told Maple Valley that the 2003 Ordinance and 2005 Resolution (“the Laws”) were invalid only a few months before this suit was filed. [CP 42 (lines 6-8)]. The relevant **fact is when** Maple Valley first knew (or in the exercise of reasonable diligence should have known) that the Law Firm's advice about the laws was erroneous.

Law Firm argues that a diligent lay city council would have learned of the invalidity of the laws before June 7, 2008. As explained below, however, none of the events to which Law Firm points establishes as a matter of law that any diligent layperson would have discovered a

claim before October 2010—and certainly not before June 7, 2008. [CP 42-44].

B. The Facts Establish That There Was No Triggering Event Prior to October 2010.

For the ease of the Court, the attached Appendix A demonstrates the facts supporting Maple Valley’s position that there was no triggering event prior to October, 2010 to cause Maple Valley’s City Attorney to conclude that the Laws were invalid. Indeed, the facts construed in favor of Maple Valley show a clear pattern that it was relying, understandably, on the legality of the Laws and proceeding pursuant to what it thought were its legal obligations under both, prior to October 2010.

For this Court to truly understand why there was no triggering event, the Court must review the facial requirements of the 2003 Ordinance. The 2003 Ordinance required that the Public Works Department prepare a “final special assessment roll” **after** construction was complete and when final construction costs could be determined. In this case, the construction project was not formally closed out until September 17, 2009. The 2003 Ordinance also required that a “final assessment roll” be created after construction was completed (after final construction costs were known). *See* Appendix A, ¶¶ 12-14. Maple Valley staff, therefore, was unable to begin their work to determine the

final costs relating to the special assessment district until September 17, 2009 (formal close out of the construction project).

Equally important, if not more important, is the fact that the Law Firm cannot point to any damage or injury that Maple Valley suffered until it refunded the property owners' monies with interest in March 2011, an issue to be discussed, *infra*, in Section II.C.

The Law Firm claims that four separate and distinct events, all occurring at different times, triggered the statute of limitations. [BR 28-33]. This Court should take note of this argument, and ask: how can four separate and distinct events, occurring at different times, not be proof positive that genuine issues of material fact are present precluding summary judgment as a matter of law?

First, the Law Firm suggests that a trigger consisted of payment by three separate property owners of monies which should have alerted Maple Valley staff to "investigate" the payments made. [BR 29]. Three payments were made: two in 2006 and one in 2008 [CP 325-327], yet Law Firm does not assert that any one of these payments was "the" triggering event. Law Firm's argument here ignores the fact that Defendant Disend gave specific advice to Maple Valley staff to record "Notices of Estimated Lien" against property in late 2005 and early 2006. [CP 189]. Given the Law Firm's involvement in the enactment of the 2003 Ordinance, the 2005

Resolution, and the logistics of implementing the 2005 Resolution, one must ask: why would Maple Valley staff suddenly question any of this just because payments were made under the same schemes that received the blessing and advice of the Law Firm? This argument is patently frivolous. Indeed, the fact that payments were made without protest would only have strengthened any reasonable person's trust or reasonable municipality trust in the facial validity of the 2003 Ordinance and 2005 Resolution. The essential facts necessary to know that duty, breach, causation, and injury are present are not satisfied by this so-called triggering event.

Second, the Law Firm argues that the termination of its services somehow triggered the statute of limitations. [BR 29-30]. This argument ignores the fact that the first in-house counsel hired by Maple Valley in April 2007 was a lawyer from the Law Firm who was involved in providing advice on the logistics of implementing the 2005 Resolution. [CP 327]. Maple Valley's opting to hire its second in-house counsel did not, in and of itself, trigger any knowledge by City staff, or by a later-hired attorney that the prior lawyers were negligent. The essential facts necessary to know that duty, breach, causation, and injury were all present are not satisfied by this so-called triggering event.

Third, the Law Firm claims that Ms. Todd's merely learning of the existence of the 2005 Resolution is a triggering event. [BR 30]. This

radical proposition would place unprecedented demands on this State's municipalities. Whenever a city attorney first comes to learn of the existence of an Ordinance or Resolution, "on the books" the attorney would have to perform legal research into such an Ordinance or Resolution's validity; lest the statute of limitations bar a malpractice claim. This requirement would vastly increase the cost of municipal legal services.

The Law Firm's position, moreover, does not comport with common sense. A lawyer simply does not just "know" an adopted resolution is legally invalid simply because she is told of its existence. To determine legal invalidity requires legal research and analysis. Further complicating this so called triggering event of simple knowledge of the 2005 Resolution is that the 2005 Resolution was inextricably linked to the 2003 Ordinance.

Ms. Todd did not know — nor in the exercise of reasonable diligence could she have known — of the invalidity of both enactments until she began her legal analysis of both enactments. Ms. Todd's research into the legislative history of each enactment began and was completed in October 2010.

Maple Valley filed suit well within the limitations period **after** Ms. Todd did that work. For the foregoing reasons, this argument is also

meritless. The essential facts to know that duty, breach, causation, and injury are present are not satisfied by simply learning of the mere existence of a piece of municipal legislation.

Finally, the Law Firm claims that in early 2008, Ms. Todd became aware of the existence of the 2005 Resolution; and that later in 2008 she was told the assessments needed to be “finalized.” Law Firm’s presentation of the facts ignores that Ms. Todd was serving as the Interim City Manager beginning in July 2008 – seven months after she was hired as the City Attorney, and that she was never asked to do any legal work on the 2005 Resolution **prior to being named as Interim City Manager.**

[CP 43-44 and 586 (lines 9-21)].

Ms. Todd’s declarations set forth that the Finance Director wished to finalize the 2005 assessments for purposes of his discussions with her regarding their joint preparation of the 2009 budget. Ms. Todd’s declarations also establish that she asked the Interim City Attorney to look into the matter of “finalizing” the 2005 assessments in February 2009. If nothing else, Ms. Todd’s communications to the Interim City Attorney in February 2009 about the 2005 Resolution demonstrate that she was asking another attorney to research the matter and at least raises the question whether she knew anything about the 2005 Resolution other than the fact it existed. [CP 586 (lines 9-21)]. A reasonable trier of fact might conclude

that this February 2009 communication is “the” triggering event. In any event, Law Firm’s suggestion that some “awareness” by Ms. Todd in 2008 of the existence of the 2005 Resolution ignores the other material facts surrounding this time period, and does not, in any way, establish that Ms. Todd knew all essential facts necessary to conclude that duty, breach, causation, and injury were present.

Again, it is undisputed that Ms. Todd did not discover the legal defects in the 2003 Ordinance and 2005 Resolution until October 2010. To the extent that the Law Firm is claiming that Ms. Todd **could have** discovered those defects sooner, that is a question of fact for the trier of fact and reasonable minds can and do differ on this issue. The relevant question under the discovery rule is when Maple Valley, in the exercise of reasonable diligence knew or should have known all of the essential elements of the cause of action for malpractice. As demonstrated, that is intrinsically a factual question upon which reasonable people could differ and therefore summary judgment was inappropriate. *VersusLaw, Inc. v. Stoel Rives, LLP*, 127 Wn. App. 309, ¶¶ 22, 32, and 43, 111 P.3d 866 (2005), *review denied*, 156 Wn.2d 1008, 132 P.3d 147 (2006).

C. The Law Firm’s Position is Contrary to Long Established Tenets of Statute of Limitations in Professional Negligence Cases.

Maple Valley incorporates by reference its argument in its opening brief on the discovery rule. [BA 12-14]. The essential element of injury in the statute of limitations analysis in legal malpractice has been addressed by Maple Valley in its opening brief. [See BA 13, 18, 19]. Additionally, this Court’s recent decision in *Murphey v. Grass*, 164 Wn. App. 584, 267 P.3d 376 (2011), is fully supportive of Maple Valley’s position and is not discussed or addressed by Law Firm.¹

Murphey notified his CPA in 2004 [*Murphey, supra*, ¶¶ 3, 5] of the CPA’s negligence in preparing Murphey’s tax returns. Murphey filed suit in November 2009 – five years after notifying his CPA of the negligence. *Id.* ¶ 11. This Court framed the issue thus: “The question here is when Murphey suffered actual and appreciable damage, causing his claim to accrue.” *Id.* ¶ 12. This Court correctly held that Murphey did not suffer actual damages until the appeals division of the Department of Revenue denied Murphey’s petition for correction of the assessment.

While *Murphey* is a professional negligence accounting malpractice case, the principle enunciated in *Murphey* relative to damage is precisely the same as it is in the case at bar. Maple Valley incurred no damage until it refunded the taxpayer’s monies wrongfully obtained. [CP

¹ Ironically, the trial court which granted summary judgment of dismissal to the defendant accountant in *Murphey* is the same jurist who granted summary judgment in this case.

42 (lines 19-25), 43 (lines 1-2), and 588 (lines 18-19)]. This suit was instituted three months later.

The essential element of injury in the statute of limitations analysis in legal malpractice has been addressed by Maple Valley in its opening brief. [See BA 13, 18, 19].

D. The Law Firm’s Position Returns to the Occurrence Rule of *Busk v. Flanders*, 2 Wn. App. 526, 468 P.2d 695 (1970) by Arguing That the Statute of Limitations Commences to Run Upon the Occurrence of the Malpractice and That—Contrary to *Peters*—a Client Must at All Times Distrust and Second-Guess Its Attorney.

Law Firm’s Brief (at pp. 16-22) argues that the statute of limitations should run from the negligent act. This is contrary to Washington law. In overturning the antiquated rule of *Busk*, *Peters* adopted the discovery rule: *i.e.*, the statute of limitations is triggered only when the client discovers or in the exercise of reasonable diligence should have discovered all of the facts giving rise to the client’s cause of action. The statute of limitations does not simply begin running at the precise time of the lawyer’s negligence. This position was resoundingly rejected in *Peters supra*, p. 406. The Law Firm’s sole reliance on *Cawdrey* is also misplaced.

Peters held as follows: “[T]he statute of limitations for legal malpractice should not start to run until the client discovers, or in the exercise of reasonable diligence should have discovered the facts which give rise to his or her cause of action.”. *Peters, supra* p. 406. There was nothing in the 2003 Ordinance or the 2005 Resolution that would cause a reasonable municipality such as Maple Valley to, in any way, question its legality, where both had been approved by their lawyers, the Law Firm. Indeed, as previously argued, the Law Firm helped implement the logistics of the 2005 Resolution.

Rather, there must be a triggering event. In the words of *Cawdrey*, a plaintiff must, “know the facts supporting **each essential element** of the cause of action before the limitations periods begin to accrue.”. *Cawdrey, supra*, ¶ 15. [Emphasis added].

In *Cawdrey*, the plaintiff, Elizabeth, negotiated a partnership agreement in 1994 worth \$370,000. In 1999, the partnership agreement was ignored, and the structured buyout for Elizabeth from the partnership was \$300,000. The Court, when reviewing the facts in *Cawdrey*, found that Elizabeth knew or could have known of the facts of the valuation of her partnership even though the same attorney was representing her and the partnership for the structured buyout in 1999. Because Elizabeth, herself, knew of the precise facts underlying the cause of action within

three years of the structured buyout in 1999, she was required to bring suit within those three years and the Court held the discovery rule did not apply under those facts.

This case is markedly different from *Cawdrey*. The undisputed facts construed most favorably to Maple Valley show nothing to cause the new City Attorney **to question** her predecessors' work or legal advice prior to October 2010. From the time of the enactment of the 2003 Ordinance and the 2005 Resolution, the City staff was relying on the validity of both enactments. Indeed, as earlier stated, both the Public Works Director, Stephen Clark, and City Engineer Dan Matson, were working in 2009 and 2010 to implement what they had every reason to believe were the valid 2003 Ordinance and 2005 Resolution and acted in accordance with the "requirements" of both. [CP 367-385 and 545: lines 20-23].

Rather than asking what would have caused Christy Todd or any lay agent of Maple Valley to *question* the validity of the enactments, the Law Firm instead assumes that Maple Valley should not have relied on their validity. If accepted, the Law Firm's position would work a radical change both in the case law and on the ground. Under the Law Firm's theory, municipalities would be under a *duty* to second-guess the advice provided by their attorneys. Instead, for every single ordinance or

resolution, they would have to seek a second legal opinion, lest the statute of limitations run out. This requirement would be flatly contrary to *Peters*. *Peters* rightly assumes that clients should rely and are entitled to rely on their attorneys' advice. The requirement would also impose unprecedented burdens on this State's municipalities.

In addition, the defendants do not address the indisputable fact that Maple Valley had not sustained damage prior to the refund of the monies in March 2011.² [CP 42 (lines 19-25), 43 (lines 1-2), and 588 (lines 18-19)]. Indeed, just the opposite is the case: ironically, Maple Valley "benefited" from the Law Firm's negligence, having the use of property owners' monies illegally obtained. The Law Firm argues that Maple Valley's "harm" was its inability to rely on the Laws, and the Law Firm claims this harm accrued as soon as each piece of legislation was adopted. [See, e.g., BR 25-26]. This is simply false and it is contrary to law. See *Murphey, supra*, ¶¶ 29-30 ("Murphey's claims did not accrue until actual injury flowed from [the] negligence."). As a matter of fact, Maple Valley was not harmed until it discovered the infirmity of these laws in October 2010, repealed them in February 2011 after receiving advice from another

² The Maple Valley City Council authorized the refunds on February 14, 2011, but the refunds did not occur until March. [BA 10]

attorney supplied by the City's insurer, and had to make refunds, which it did in March 2011.³

E. The Trial Court Should Determine the Validity of the 2003 Ordinance and the 2005 Resolution.

As discussed in Maple Valley's material before the trial court [CP 400-402], and in its opening brief [BA 21-23], the validity of the 2003 Ordinance and 2005 Resolution before the trial court was never decided.⁴ Maple Valley filed a Motion for Partial Summary Judgment Declaring 2003 Ordinance and 2005 Resolution Legally Defective and Void. On remand, this key issue should be decided by the trial court as a matter of law.

F. The Legislature's Amendment to RCW 35.72.050(1) Did Not Abrogate *Woodcreek Land Ltd. v. City of Puyallup*, 69 Wash. App. 1, 847 P.2d 501 (1993).

The Law Firm's reliance on the Legislature's 1997 amendment to Chapter 35.72 RCW is not only misplaced, but it also ignores long-standing tenets of statutory interpretation.

³ Indeed, the fact of payment by property owners without complaint, protest, or challenge is further evidence of the facial validity of the 2003 Ordinance and 2005 Resolution.

⁴ Law Firm argues on the one hand that the statute of limitations has run, but on the other hand argues that the 2003 Ordinance and 2005 Resolution are legal and enforceable. It can't have it both ways.

The Legislature is never presumed to have overruled existing case law *sub silentio*. Rather, the Legislature must expressly overrule a case. See, e.g., *In re Marriage of Williams*, 115 Wn.2d 202, 208, 796 P.3d 421 (1990):

“Absent an indication that the Legislature intended to overrule the common law, new legislation will be presumed to be consistent with prior judicial decisions. *State v. Calderon*, 102 Wn.2d 348, 351, 684 P.2d 1293 (1984); *State v. McCullum*, 98 Wn.2d 484, 493, 656 P.2d 1064 (1983); *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 887-88, 652 P.2d 948 (1982); *Green Mt. Sch. Dist. 103 v. Durkee*, 56 Wn.2d 154, 161, 351 P.2d 525 (1960).”

As stated in *Williams*, the law is precisely contrary to Law Firm’s position. *Woodcreek Land* is and remains valid and reasoned authority for the illegality of the 2003 Ordinance.

When the trial court rules, as a matter of law, on the illegality of both the 2003 Ordinance and 2005 Resolution, the nexus and proximate cause linkage between the negligence of the Law Firm and Maple Valley’s damage is axiomatic.

III. CONCLUSION

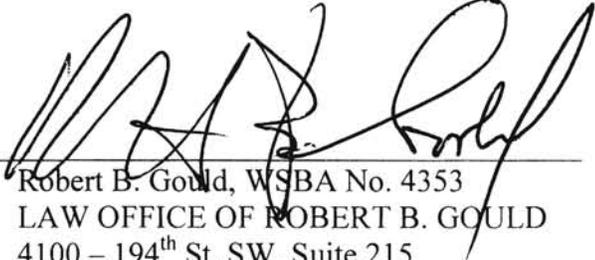
Maple Valley relied upon the Law Firm to provide legal services consistent with the standard of care. The Law Firm does not and cannot argue that Maple Valley’s reliance was inappropriate. Yet, the Law Firm’s position is that in some undefined manner, without any triggering event, Maple Valley should have known of the legal infirmities of the

2003 Ordinance and 2005 Resolution. This is wrong and contrary to long-standing decisions of our courts. Genuine issues of material fact are intrinsically involved in this matter and the improvident grant of summary judgment should be corrected by this Court. This matter should be reversed and remanded to the trial court with directions for the trial court to rule on Maple Valley's pending Motion for Partial Summary Judgment on the illegality of the 2003 Ordinance and 2005 Resolution.

DATED this 17th day of August, 2012.

Respectfully Submitted:

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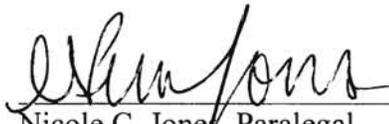
DECLARATION OF SERVICE

On August 17, 2012, I caused to be delivered via email a true and accurate copy of the attached document, to the following:

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*Attorney for Respondents Bruce L. Disend and Claudia J.
Disend, and Kenyon Disend, PLLC*

The original and a copy of this document were also sent via legal messenger to be filed in the Court of Appeals.

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



Nicole C. Jones, Paralegal
LAW OFFICE OF ROBERT B. GOULD

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Appendix A: Timeline of Facts Supporting Maple Valley's
Position That There Was No Triggering Event Prior
to October, 2010

**Timeline of Facts Supporting Maple Valley's
Position That There Was No Triggering Event Prior
to October, 2010**

(1) August 21, 2003 – Maple Valley employee Bob White asks Defendant City Attorney Bruce Disend to review a draft of the 2003 Ordinance. [CP 60-66].

(2) December 1, 2003 – The 2003 Ordinance is adopted and later codified into the municipal code as Chapter 16.40, specifically relying on the underlying grant of authority conferred by RCW 35.72. [CP 3 (¶2.3), 52-59, and 683-687].

(3) July 15, 2005 – City Attorney Disend bills time to client Maple Valley for his review of the 2005 Resolution, and amends the staff report RE 2005 Resolution. [CP 681].

(4) November 28, 2005 – Maple Valley, through its City Council, adopts the 2005 Resolution creating the Four Corners Special Assessment District (SAD). [CP 68-71].

(5) December 15, 2005 – Defendant Disend advised Maple Valley staff via email RE Notices of estimated liens to be placed on property owners in the Four Corners SAD. [CP 678-679].

(6) February 9, 2006 – Notices of Estimated Lien recorded against property owners within the SAD. [CP 75-76].

(7) April 1, 2007 – Attorney Joe Levan is hired from the Law Firm as Maple Valley’s first in-house City Attorney. [CP 327].

(8) December 3, 2007 – Christy Todd is hired as Maple Valley’s City Attorney. [CP 32].

(9) July 20, 2008 – City Attorney Christy Todd is appointed Interim City Manager for Maple Valley, at which time Maple Valley has no City Attorney and Todd has done no work nor has she been asked to do any work on the SAD created by the 2005 Resolution. [CP 585 (lines 1-3)].

(10) February 20, 2009 – Email string from Interim City Manager Todd to Roger Kuykendall, Interim Public Works Director, requesting SAD review. [CP 364-365].

(11) April 14, 2009 – Todd returns to City Attorney position. [CP 585 (line 7)].

(12) September 17, 2009 – Final acceptance letter to Contractor Gary Merlino relating to SAD close-out. [CP 544 (lines 1-4) and 556].

(13) February 25, 2010 – Maple Valley employee Dan Mattson finishes a draft final assessment roll consistent with the requirements of the 2003 Ordinance. [CP 545 (lines 18-19)].

(14) October 21, 2010 – Washington State Department of Transportation (WSDOT) notifies Maple Valley that WSDOT’s

review of the project was complete as it relates to SAD close-out.
[CP 543 (lines 13-24) and 560-561].

(15) October 27, 2010 – City Attorney Todd memo to City Manager David Johnston containing analysis and opinion regarding illegality of 2003 Ordinance and 2005 Resolution. [CP 42 (lines 6-8)].

(16) January 10, 2011 – City Attorney Todd and municipal law attorney Dale Kamerrer meet with Maple Valley City Council in executive session. [CP 42 (lines 17-18)].

(17) February 14, 2011 – City Council repealed 2005 Resolution authorizing refund of monies paid. [CP 588 (lines 18-19)].

(18) June 7, 2011 – Maple Valley files legal malpractice case against Law Firm.