IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION TWO

Earl Iddings, et al.,	)	NO. 43033-9-II
	)	
Appellants,	)	
	)	
vs.	)	
	)	
Michael Griffith, et al.,	)	MOTION ON THE MERITS
	)	
Respondents,	)	
	)	
	)	

1. IDENTITY OF THE MOVING PARTY

The Respondent, Mason County (and the Mason County Department of Community Development and Mason County Public Works), through its attorney, is the moving party and seeks the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 18.14, Respondent moves the court to affirm the decision of the trial court.

3. FACTS RELEVANT TO MOTION

Michael Griffith, who is the defendant-respondent in this matter, owns property on Dewatto Beach Drive in Mason County, Washington. RP (Vol. IV) 4. Without ever having seen or visited the property, Griffith purchased the property in 2006 on the internet. RP (Vol. IV) 4, 16.

Griffith's property is about eight-tenths of an acre. RP (Vol. IV) 4. About 125 feet of Griffith's property is alongside Dewatto Bay. RP (Vol. IV) 4, 17. Dewatto Beach Drive crosses Griffith's property near the water's edge. RP (Vol. IV) 4, 17. On the non-water side of Dewatto Bay, there is an approximately 50-foot, vertical bluff. RP (Vol. IV) 4, 7. Most of Griffith's property is located above the 50-foot bluff. RP (Vol. IV) 4.

The distance from the centerline of Dewatto Beach Drive to rocks that line the shore is only 12 or 13 feet. RP (Vol. IV) 17. On the opposite side of the road, it is not more that 22.5 feet from the centerline to the toe of the slope of the vertical bluff that separates most of Griffith's property from access to the road. RP (Vol. I) 119, 131; RP (Vol. III) 96; Ex. 12, 33, 62.

Griffith's only access to the main portion of his property, which is above the 50-foot bluff, is to climb up the 50-foot bluff on foot. RP (Vol. IV) 5. To obtain better access to his property, Griffith decided to build a driveway up the bluff. RP (Vol. IV) 5-6. In preparation of building the driveway, Griffith hired an engineer, had a topographic map prepared, and applied for a variety of required permits. RP (Vol. IV) 6-7.

The engineer's plan to build the driveway up the bluff required the placement of a concrete-block wall to hold up the side of the bluff. RP (Vol. IV) 8. Griffith's neighbor, Earl Iddings, opposed Griffith's plan to build a driveway up the bluff. RP (Vol. IV) 10. The planned placement of the concrete blocks led to a dispute about the width of the county's right-of-way along Dewatto Beach Drive. RP (Vol. IV) 10-17.

In 1912 a prior owner of the affected property executed a "waiver" that allowed a 20 foot right-of-way (measured from center of roadway) for Dewatto Beach Drive. RP (Vol. I) 10-11, 19; RP (Vol. III) 60-66, 73; Ex. 32. There was a purported second waiver for a 30 foot right-of-way (measured from center of roadway), known as the "Beebe Waiver," in 1957. RP (Vol. I) 17-18; RP (Vol. III) 60, 73, 77. The trial court found

that the plaintiffs "failed to show that the Beebe Waiver was a dedication applicable to Dewatto Beach Drive at the location at issue." CP 653 (Finding of Fact No. 15). Neither the 1912 nor the 1957, Beebe Waiver, were recorded. RP (Vol. I) 42, 104-105; RP (Vol. III) 66.

Griffith hired Sidney Bechtoldt, a licensed professional surveyor, to survey the property and to locate the right-of-way. RP (Vol. III) 57-59. Evidence showed that the maximum historical width of the right-of-way was 22.55 feet (measured from the centerline of the road), but Iddings disputes this evidence and claims instead that the county has maintained, and the public has used, a larger width than 22.55 feet but that the full extent of it has been reduced by slough falling from the vertical bluff. RP (Vol. I) 100-102, 125, 145-146; RP (Vol. II) 33; Ex. 12, 33.

The trial court found that "credible testimony" showed that Mason County had maintained a turnaround on Griffith's property, but also found that testimony about the width of the Mason County's acceptance of the common law dedication was "conflicting." CP 653 (Findings of Fact No. 17, 18). The trial court, as the finder of fact, found that evidence disputing a right-of-way of 22.55 feet was "vague," "inexact," or not based upon

personal knowledge. CP 654 (Findings of Fact No. 20, 21, 25, 28, 29). The court noted that Mr. Brush, who was a witness presented by Griffith, "testified very credibly as to Mason County's process for determining the scope of historical public use." CP 655 (Findings of Fact No. 30).

The court found that "[t]here was no testimony that the public ever used an area wider than Dewatto Beach drive as it currently exists for a public road." CP 654 (Finding of Fact No. 24). The court found that Griffith's surveyor, Bechtoldt, "was a credible witness." CP 655 (Finding of Fact No. 32). Based upon Bechtoldt's survey, admitted as Exhibit 12, and "all the evidence admitted at trial," the court found that the right-of-way is 22.55 feet. CP 654 (Finding of Fact 22); CP 655 (Findings of Fact No. 31, 32, 33, 34).

4. GROUNDS FOR RELIEF

Because he is a party asserting an easement by prescription, Iddings bears the burden of proving the prescriptive easement by a preponderance of the evidence. *Hebish v. Pacific County*, 168 Wash. 91, 92, 10 P.2d 999 (1932).

As the appellant in this matter, Iddings is required to arrange for the transcription of all parts of the verbatim report that are necessary for consideration of the issues presented on review. RAP 9.2(b). Particularly, because Iddings is challenging the trial court's findings of fact, he is required to "include in the record all evidence relevant to the disputed verdict or finding." *Id.*

Where the appellant has not provided a sufficient record for the court to review, the reviewing court accepts the trial court's findings as true. *Rekhi v. Olason*, 28 Wn. App. 751, 753, 626 P.2d 513 (1981). An insufficient record precludes review of the alleged errors. *Bulzomi v. Dep't of Labor & Indus.*, 72 Wn. App. 522, 525, 864 P.2d 996 (1994). If the trial court's findings are not properly contested, they are verities on appeal. *State v. Alexander*, 125 Wn.2d 717, 723, 888 P.2d 1169 (1995).

The trial court's trial minutes show that Iddings called nine witnesses to testify at trial: Steven Ottmar, Jeremy Hicks, Robert Thuring, David Clevenger, Lloyd Iddings, Tim Clements, Gregory Miller, and Earl Iddings, and on rebuttal, Kell McAboy. CP 442-444. Iddings provided the appellate court with verbatim reports of each of these nine witnesses'

testimony. The trial court defendants, Griffith and Mason County, presented eight witnesses at trial, as follows: Peter Martinez, Sydney Bechtolt, Jr., Alan Tahja, James McLean, Geroge Cates, Dale Fassio, Erik Bush, and Michael Griffith. CP 444-446. Iddings has provided the appellate court with verbatim reports of only three of these eight witness (Bechtoldt, Tahja, and Griffith). Appellant bears the burden of providing a sufficient record on appeal from which the reviewing court can make a ruling that accurately follows the law. *Matter of Estate of Lint*, 135 Wn.2d 518, 531-532, 957 P.2d 755 (1998). And, "[a]s a general principle, an appellant's brief is insufficient if it merely contains a recitation of the facts in the light most favorable to the appellant even if it contains a sprinkling of citations to the record throughout the factual recitation." *Id.*

On review, evidence is viewed in the light most favorable to the party who prevailed at trail, and deference is given to the trial court's determinations of witness credibility and the resolution of conflicting testimony. *Weyerhaeuser v. Tacoma-Pierce County Health Dep't*, 123 Wn. App. 59, 65, 96 P.3d 460 (2004). When appellant challenges the trial court's findings and there is conflicting evidence presented at trial in

regard to that finding, the reviewing court need only consider the evidence that is most favorable to the respondent in support of the challenged finding. *Matter of Estate of Lint*, 135 Wn.2d 518, 533, 957 P.2d 755 (1998). As the appellant, Iddings bears the burden of perfecting the record so that the reviewing court has before it all relevant evidence. RAP 9.2(b); *Bulzomi v. Dep't of Labor & Industries*, 72 Wn. App. 522, 525, 864 P.2d 996 (1994).

Notwithstanding Iddings' omission of relevant parts of the record form his designation of the record, however, the record he has provided does not support his contentions or rebut the trial court's finding of fact and conclusions of law.

The primary theme of Iddings' assignments of error is that he disputes the trial court's finding that the Dewatto Bay Drive right-of-way is 22.55 feet rather than the 30 feet or more as asserted by Iddings. (Brief of Appellant, at p.9-10). But Iddings' assignments of error, and particularly his first three assignments of error, do not resemble any finding of fact nor any conclusion of law by the trial court. Although Iddings' assignments of error could be interpreted to be assigning error to

conclusions of law, rather than issues of fact, each of the assignments is premised upon an assertion of fact by Iddings that does not appear in the trial court's findings of fact. Iddings does not cite any finding of fact by number as required by RAP 10.3(g).

Some of the trial court's findings of fact might be properly interpreted as conclusions of law, and if conclusions of law are erroneously labeled as findings of fact, the reviewing court reviews them de novo as conclusions of law. *Hegwine v. Longview Fibre Co., Inc.*, 162 Wn.2d 340, 353, 172 P.3d 688 (2007).

Iddings' assignments of error numbers one through three are without merit because they do not correctly identify or reflect any finding of fact or conclusion of law actually rendered by the trial court and because the argument detailed below, in regard to Iddings' fourth assignment of error, shows that the court did not err when it assessed the credibility of witnesses and evidence and when it found that the common law dedication and prescriptive easement at issue in this case is 22.55 feet.

In his assignment of error number "4", Iddings asserts as follows:

> The lower court erred in concluding that the Dewatto Bay Drive right of way was 22.5 feet from the centerline wide when Washington law requires, as necessary and proper, that county road right of ways be 30 feet from the centerline wide. CP 655.

(Brief of Appellant at p.9). The citation offered by Iddings to support this assignment of error corresponds to page five of the trial court's "Findings of Fact and Conclusions of Law," which contains findings of fact numbers 30 through 35 and conclusions of law numbers one and two.

Finding of fact number 33 states that the right-of-way is 22.55 feet. CP 655. It is a fair interpretation of Iddings' fourth assignment of error that he is asserting that RCW 36.86.010 requires the court to find that either the common law dedication or the prescriptive easement in this case, or both, require the court, as a matter of law, to stretch the right-of-way to 30 feet from the centerline.

But RCW 36.86.010 declares as follows:

> From and after April 1, 1937, the width of thirty feet on each side of the center line of county roads, exclusive of such additional width as may be required for cuts and fills, is the necessary and proper right-of-way width for county roads, unless the board of county commissioners, shall, in any instance, adopt and designate a different width. This shall not be construed to require the acquisition of

> increased right-of-way for any county road already established and the right-of-way for which has been secured.

The language of RCW 36.86.010 merely declares what the "necessary and proper" width for the right-of-way is, but it does not require a particular right-of-way width. *Id.* Particularly, the statute specifically does not require that the right-of-way of previously established roads be expanded. *Id.*

Regardless of when the right is first asserted in court, the rights of a prescriptive easement vest when there has been an "open, notorious, and adverse use [of the property] for more than ten years. *King County v. Hagen*, 30 Wn.2d 847, 856, 194 P.2d 357 (1948).

And RCW 36.86.010 applies to roads that are created after April 1, 1937. *Id.* In the instant case, the landowner's 20-foot from centerline dedication was granted in 1912. At some unknown time over the years, the dedicated right-of-way apparently crept out an additional 2.55 feet (apparently by prescriptive easement) as shown by credible measurement of the area that was maintained by the county and used by the public. RP (Vol. I) 100-102, 125, 145-146; RP (Vol. II) 33; Ex. 12, 33.

Iddings asserts that Mason County Code § 16.38.050 requires a right-of-way of a 50-foot radius at the end of county roads for a turnaround. (Brief of Appellant at p. 23). However, it is apparent that this is a typographical error and that Iddings intends to cite Mason County Code § 16.28.050. But this code provision does not apply to this case, because it only applies to the platting of subdivisions and to the "division of land into four or fewer lots." Mason County Code § 16.04.020. This provision of the Mason County Code does not operate to expand the size of a preexisting prescriptive easement or common law dedication. Still more, Iddings has provided no citation to the record or authority to support a finding that this code provision was in effect when the prescriptive easement and the common law dedication at issue in this case vested. Finally, if any party has a grievance regarding a provision of Title 16 of the Mason County Code, the sole remedy is an appeal to the hearings examiner. Mason County Code §§ 15.11.010, 15.11.040.

In the body of his brief, Iddings cites a number of cases to argue his position that the right-of-way is greater than 22.55 feet, but Iddings erroneously interprets the holding or applicability of these cases.

In the case of *Sparks v. Douglas County*, 39 Wn. App. 714, 695 P.2d 588 (1985), Sparks, who owned property, executed a "Right of Way Deed" and granted to Douglas County a 40-foot wide right-of-way for a road on his property. *Id.* at 716. In 1980, after the county had for many years maintained and used a blacktop road that occupied a fractional portion of the 40-foot right-of-way, a dispute arose over the location and size of the easement. *Id.* at 716-717.

The deed was later found to be defective because it lacked a sufficient legal description of the affected property, but the court found that Douglas County nevertheless had a prescriptive easement over the 40-foot right-of-way. *Id.* at 717. Even though Douglas County had maintained a road and blacktopped only a portion of the easement, which was less than 40 feet, and had not exercised any control over the land beyond the blacktop, the court found that the prescriptive easement extended to include the entire 40-foot right-of-way. *Id.* at 718-719. (Thus, *Sparks v. Douglas County* is a case that pertains to prescriptive easements but does not address common law dedications.)

The defective deed was viewed as evidence of the parties' intent to grant a 40-foot easement. *Id.* at 717. And the court found that the 40-foot easement was necessary to maintain an unobstructed view of the roadway so as to prevent accidents. *Id.* at 718-719. The *Sparks* court concluded its analysis by emphasizing that "[a]n appellate court will not retry factual issues of a case but will only review the record to determine if the findings are supported by substantial evidence." *Id.* at 722, citing *In re Marriage of Smith*, 100 Wn.2d 319, 324, 669 P.2d 448 (1983); *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959).

In the case of *In re West Marginal Way in Seattle of Seattle*, 109 Wash. 116, 186 P. 644 (1919), the City of Seattle condemned a 100-foot width of land but asserted that it contained a county road with a 60-foot right-of-way that it claimed by prescriptive user. *Id.* at 117, 119. The City wanted to subtract the value of the 60-foot right-of-way from the 100-foot condemnation to determine the cost of the condemnation. *Id.* at 117-118. The road was 10 to 12 feet in width and had been used by the public for more than 30 years. *Id.* at 118-119. Both the existence and the width of the right-of-way were in dispute. *Id.* 118.

The court found that "the right to the roadway was acquired by prescription" because the public had used the road for many years and also because public money was used to maintain the road. *Id.* at 119. (Thus, *In re West Marginal Way* is a case that pertains to prescriptive easements but does not address common law dedications.)

The City of Seattle maintained that the prescriptive easement included the entire claimed 60-foot right-of-way, but the affected property owner claimed that the easement only included the 10 to 12 feet of roadway that was actually used as a roadway. *Id.* at 120. But when the road was originally declared by the county, "[t]he county actually laid out and surveyed a road 60 feet in width." *Id.* at 120. The court found that the prescriptive easement included the entire 60-foot claimed right-of-way, and in support of this finding the court cited its prior decision from the case of *City of Olympia v. Lemon*, 93 Wash. 508, 161 P. 363 (1916), and also quoted from the court's prior decision in *Yakima County v. Conrad*, 26 Wash. 155, 66 P. 411(1901), as follows:

> After the right to a highway has been acquired by usage, the public are not limited to such width as has actually been used. The right acquired by prescription and use carries with it such width as is reasonably necessary for the public easement of travel, and the

> width must be determined from a consideration of the facts and circumstances peculiar to the case.

In re West Marginal Way at 120, quoting *Yakima County v. Conrad* at 159, and citing *Olympia v. Lemon* at 510.

In re West Marginal Way is distinguished from the instant case because *Marginal Way* involved a prescriptive easement that was derived from a "road which was used by the public... by reason of the original roadway which was established by the county commissioners 60 feet in width." *In re West Marginal Way* at 122.

Olympia v. Lemon, 93 Wash. 508, 161 P. 363 (1916), is distinguished because it did not involve the creation of a new road, but instead involved a minor extension of the length of an existing road. Because the width of the right-of-way of the road was 30 feet as it existed before it was extended and the right-of-way width of adjacent streets were also 30 feet, and because the court found that "at the time the rights of the public became fixed in this road the maximum width of county roads was 60 feet, and the minimum width 30 feet," the court held that the prescriptive easement was not limited to the width of the roadway actually

used, but that it instead extended to include a 30-foot right-of-way. *City of Olympia v. Lemon*, 93 Wash. 508, 511, 161 P. 363 (1916).

In *Yakima County v. Conrad*, 26 Wash. 155, 66 P. 411(1901), as in the instant case, evidence regarding the width of the disputed right-of-way was "not very clear." *Id.* at 159. The plaintiffs alleged a right-of-way of 60 feet. *Id.* at 156. But the court affirmed the trial court's finding and decision that the right-of-way was 40 feet. *Id.* 159.

The court noted that "at the time the rights of the public became fixed in this road the maximum width of county roads was 60 feet, and the minimum width 30 feet." *Id.* at 159. The court reasoned that "[t]his is a circumstance that the court could take into consideration in fixing the width of the road." *Id.* at 159. The court did not hold that the minimum or maximum road widths were controlling of the question, but only recognized this factor as a circumstance appropriate for consideration. *Id.*

The court held that the width of the disputed right-of-way was not limited to the width of the "beaten path," but instead was the width that "is reasonably necessary for the public easement of travel" and that it "must

be determined from a consideration of the facts and circumstances peculiar to the case." *Id.* at 159.

After considering the facts and circumstances peculiar to the case, the court affirmed the trial court's decision holding that the right-of-way was 40 feet. The court concluded that "[i]t is generally a question of fact to be determined under the circumstances of each particular case, and the easement may be as broad as the public require for passing as well as traveling in one direction." *Id.* at 159-160.

A common thread that runs through each of these cases is that as a matter of law the width of a prescriptive easement is not limited to the width that has actually been used but that it may, in appropriate cases, extend to include a larger area, but the actual width of the right-of-way is a question of fact to be determined by consideration of the facts and circumstances peculiar to each case. *Yakima County v. Conrad*, 26 Wash. 155, 159-160, 66 P. 411(1901); *City of Olympia v. Lemon*, 93 Wash. 508, 511, 161 P. 363 (1916); *In re West Marginal Way in Seattle of Seattle*, 109 Wash. 116, 120, 186 P. 644 (1919); see also, *Hamp v. Pend Oreille County*, 102 Wash. 184, 187, 172 P. 869 (1918) (The width of a

prescriptive easement, though not as a matter of law limited to the width of the "actual beaten path," is nevertheless "generally a question of fact to be determined under the circumstances of each particular case").

Though similar in analysis and result, there is a distinction between prescriptive easements and common law dedications. The case of *Sweeten v. Kauzlarich*, 38 Wn. App. 163, 684 P.2d 789 (1984), involves a dispute regarding the width of a right-of-way, but *Sweeten* is distinguished from *Conrad*, *Lemon*, and *West Marginal Way* because it examines an easement obtained by common law dedication rather than a prescriptive easement.

In *Sweeten*, owners of property executed a 20-foot wide dedication for a road, but the dedication was evidenced by an unsigned, unrecorded plat. *Sweeten v. Kauzlarich*, 38 Wn. App. at 165. The portion of the dedication actually used was a narrow strip, but in 1974 Sweeten sued to establish the dedicated easement as it was described on the unrecorded, unsigned plat. *Id.*

The court found that because the plat was not recorded, the dedication did not satisfy the requirement of an express dedication but that the plat did evidence the intent of the landowner to grant a dedication. *Id.*

at 166-167. The court found that the dedication did, therefore, operate as a common law dedication. *Id.*

Kauzlarich argued that the common law dedication was limited to the part of the width of the dedication that had actually been accepted by the public; Sweeten argued that acceptance of any part of the dedication was an acceptance of the entire width originally intended to be dedicated. *Id.* at 167. The court, reasoned that "'[w]here dedication of a public highway is presumed from user..., the presumptive grant cannot be broader than the user, and is confined to the tract actually used.'" *Sweeten* at 167, quoting 26 C.J.S. *Dedication* § 44, 494. Additionally, the *Sweeten* court acknowledged that "Washington courts have also recognized that the width of a dedicated road, although presumed to be dedicated to the full width reasonably necessary for public travel, depends upon the facts and circumstances of the case." *Sweeten* at 167-168 (citations omitted). The *Sweeten* court ultimately held that the unrecorded plat established a common law dedication that was accepted by user but that the width of the dedication was limited to the width that was actually used. *Sweeten* at 165, 170.

In the instant case, Dewatto Bay Drive is only a few feet from Dewatto Bay on one side of the road and is bordered by a 50 foot bluff on the other side. RP (Vol. IV) 4, 7, 17. On the bluff side of Dewatto Bay Drive, there is only 22.55 feet from the centerline of the road to the toe of the slope of the bluff. RP (Vol. I) 119, 131; RP (Vol. II) 33; RP (Vol. III) 96; Ex. 12, 33, 62. Griffith has no access to his property except to cut away a part of the bluff, place concrete blocks, and build a driveway up the bluff. RP (Vol. IV) 4. These facts show that, as evidenced by current usage, 22.55 feet is a right-of-way that is within that which is reasonably necessary for pubic travel as determined by the trial court's "consideration of the facts and circumstances peculiar to the case." *In re West Marginal Way* at 120, quoting *Yakima County v. Conrad* at 159, and citing *Olympia v. Lemon* at 510.

"Where, as here, a mixed question of law and fact exists, it is 'within the province of the trier of fact to determine from conflicting evidence the existence of facts necessary to constitute' dedication, 'and such factual findings will not be disturbed on appeal when they are amply sustained by the record.'" *Sweeten v. Kauzlarich*, 38 Wn. App. 163, 166,

684 P.2d 789 (1984), quoting *Peeples v. Port of Bellingham,* 93 Wn.2d 776, 771, 613 P.2d 1128 (1980)(overruled on other grounds by *Chaplin v. Sanders*, 100 Wn.2d 853, 861-862, n. 2, 676 P.2d 431 (1984)).

Finally, In his assignment of error number five, Iddings asserts as follows:

> The lower court erred in concluding that the turnaround serving the dead end portion of Dewatto Bay Drive was 22.5 feet from the centerline wide when the local fire code required a wider turnaround of 45 feet from the centerline or sufficient width for fire apparatus to turn around. CP 655.

(Brief of Appellant at p.10). It appears that Iddings is asserting that the right-of-way, whenever acquired, must be 30 feet as he claims because there is a Mason County Ordinance that requires in certain cases that specific persons or entities who apply for building code permits in Mason County on dead-end roads must, unless exempted or excepted, provide "provisions for the turning around of fire apparatus." Mason County Code § 14.17.090 (Ord. No. 44-10, May 25, 2010).

Mason County Code § 14.17.150 provides an exemption, to § 14.17.090, as follows:

> When access roads cannot be installed to these standards due to topography, waterways, nonnegotiable grades or other

> similar conditions, the fire marshal is authorized to require additional fire protection or mitigation as specified in Section 901.4.3 of the 2009 IFC. The fire marshal may also approve access roads which do not meet these requirements if the road provides reasonable access under the individual facts of the case.

(Mason County Ord. No. 44-10, May 25, 2005).

Additionally, Iddings has not shown that there was any fire apparatus access road ordinance in effect when the prescriptive easement or common law dedication vested in this case. There is no credible evidence in the record that a larger area than 22.55 feet has been used as a turnaround on Dewatto Bay Drive for fire apparatus or for any other purpose, much less that any such alleged turnaround has been used for the period of time necessary to create a prescriptive easement. And an ordinance that is enacted after a dedication has vested or after a prescriptive easement has vested does not, necessarily, act as an expansion of the easement.

Finally, whether the fire marshal or Mason County issues a driveway connection permit or other permit of the kind regulated by Mason County's fire apparatus access road ordinance is not determinative of the size of a disputed right-of-way. Mason County Code § 15.11.010

mandates that administrative decisions regarding fire apparatus access roads, driveway connection permits, and the like, must be appealed first to a hearings examiner. An aggrieved party is restricted from a judicial appeal unless the administrative appeal process has been timely exhausted. Mason County Code § 15.11.040.

The fire apparatus access road issue is not properly before this court because Iddings has not exhausted his administrative remedies on this permit issue. And, still more, the fire apparatus access road issue does not determine the size of the prescriptive easement or the size of the common law dedication, but instead, is only relevant to whether and under what conditions a driveway permit should issue.

In conclusion, Iddings' first three assignments of error are without merit because they do not correctly identify or resemble any finding of fact or conclusion of law of the trial court. Additionally, the issues raised in assignments of error one through four are without merit because the trial court fairly and accurately found the necessary facts based upon substantial evidence in the record and reasonably exercised its judgment based upon the facts and circumstances peculiar to Dewatto Bay Drive.

Finally, assignment of error number five is without merit because Iddings has not identified any part of the record where it can be found that the fire apparatus access code was in effect when either the prescriptive easement or the common law dedication vested and for the requisite period of time, and because the remedy if Iddings is aggrieved by a fire apparatus road decision is to file an administrative appeal.

DATED this 1st day of October, 2012 at Shelton, Washington.

Tim Higgs, WSBA #25919
Deputy Prosecuting Attorney
Attorney for Respondent, State of Washington

MASON COUNTY PROSECUTOR

October 02, 2012 - 8:58 AM

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mdaudt@tmdwlaw.com
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

Earl Iddings, et. al.,	)	
	)	No. 43033-9-II
Respondent,	)	
	)	DECLARATION OF
vs.	)	FILING/MAILING
	)	PROOF OF SERVICE
Michael Griffith, et al.,	)	
	)	
Appellant,	)	
	)	

I, TIM HIGGS, declare and state that on October 2, 2012, I deposited in the U.S. Mail, postage properly prepaid, the following documents related to the above cause number, DESIGNATION OF CLERK'S PAPERS (SUPPLEMENTAL) and MOTION ON THE MERITS, to the following parties:

Michael Duane Daudt
Terrell Marshall Daudt & Willie PLLC
936 N 34th St Ste 400
Seattle, WA 98103-8869

Jose F. Vera
Vera & Associates PLLC
2110 N Pacific St Ste 100
Seattle, WA 98103-9181

Roy Earl Morriss
Genesis Law Firm, PLLC
2918 Colby Ave Ste 211
Everett, WA 98201-4077

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

Dated this 2nd day of October, 2012, at Shelton, Washington.

Tim Higgs (25919)

Mason County Prosecutor's Office
521 N. Fourth Street, P.O. Box 639
Shelton, WA 98584
Tel. (360) 427-9670 Ext. 417
Fax (360) 427-7754