

Kittitas County, Washington



BOARD of COUNTY COMMISSIONERS

District One

Elizabeth H. McCune

District Two

Roy A. Lumaco

District Three

Rich Hocter

December 6, 1983

Mr. Richard Toohey
% Pacific West Marketing Co.
2121 - 4th Ave., Suite 2100
Blanchard Building
Seattle, Washington 98121

Dear Mr. Toohey:

The Board of Commissioners of Kittitas County has denied your request to vacate or amend the Plat of Starwater, Division I. By a unanimous vote, the Board found that such action was not in the public interest. The following is a summary of conclusions given by Board members in support of the decision:

- 1) RCW 58.12.120 requires that 3/4 of the lot owners within a plat petition for a vacation or amendment to the plat. There is a legal question on who owns lots 7, 8, & 9. It now appears to this Board that 3/4 of the lot owners within the plat were not given the opportunity to join in the petition for vacation.
- 2) A notice of hearing was sent to the supposed owners of lots 7, 8, & 9 at the beginning of the hearing process. A subsequent title search appears to have failed to identify the notified "owners" as the fee title owners. It, therefore, appears that the legal owners were not notified.
- 3) The original request was for a plat vacation. Late in the hearing process the petitioners changed their request to an amendment to the plat. In the opinion of the Board, this was a complete change of subject and leaves doubt as to the legality of the process since the public was not notified of the change.

The consensus of the Board is that too many legal questions exist; not only with the hearing process but with the legal entanglements of several parties laying claim to an interest in the plat vacation. It is not the function of this Board to interpret legal claims. It is the function of this Board to decide the merits of the petition based on what is in the best interest of Kittitas County.

When the legal aspects of the plat discussions are resolved, the

Page Two
Richard Toohey

Board will be open to a new hearing on the petition for a plat
vacation.

Sincerely,



Elizabeth H. McCune, Chairman
Board of Commissioners

EHM/cm

~~cc.~~ Tom Pickerel, Kittitas County Planner

BARGHAUSEN CONSULTING ENGINEERS, INC.

"Land Planning, Survey, and Design Specialists"

September 1, 1983

EXPRESS MAIL
B 35466996

Kittitas County
Board of Commissioners
Kittitas County Courthouse
Ellensburg, Washington 98926

RECEIVED
SEP 6 1983

RE: Proposed Vacation of Plat of Starwater
Information and Case Summary
Our Job # 1050

1st _____ 2nd 3rd
BOARD OF KITTITAS COUNTY COMMISSIONERS

Dear Honorable Board Members:

On behalf of our client and the owner of the Starwater Division No. 1 property, Mr. Richard Toohey of Starwater Glen, Inc., I would like to take this opportunity to reiterate some of the key elements which should be considered in the proposal before the board. The vacation of the plat is of great concern to the property owner and it is clear that nothing further can be done with the property by the owner unless and until this action is completed.

The first and foremost issue that must be considered is the reasonableness of the request and the fact that the existing development is neither functional nor economically feasible and probably should never have been recorded in the first place, considering the solution that had been proposed for the sanitary sewer system. Unfortunately, the plat was part of a much larger overall project which was planned based upon certain conditions which have changed over the past five years and which have, consequently, resulted in complete elimination of these plans in the future. In order to sell lots within the proposed project (even if these were marketable in the economy), the utility systems would have to be completely re-done and some method of sewage disposal would have to be provided. The interim solution presented five or six years ago when the original development was proposed is no longer valid and would constitute a significant potential adverse impact on the environment. In order to develop the property, the project must be served by sanitary sewer service from the Kittitas County Sewer District No. 1. This cannot be done using the existing plat development, since the costs would be prohibitive and, therefore, all of the lots existing as proposed on the Starwater plat are, in effect, non-building sites. Unless some relief is granted to the property owner to proceed with an alternative development

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Board of Commissioners.
1050
September 1, 1983

plan, this project must continue to remain incomplected with substantial costs occurring every year to the land owner.

The second item of concern is related to the issue of how the project can be revised to establish a reasonable use on the property. Clearly, no action can be taken until the existing plat has been vacated. The existence of the lot lines and the building envelopes completely restrict use of the property for any other purpose. The proposal that has been put forth by the Starwater Glen, Inc. group for the property is a proposal which takes into consideration the existing improvements in the area and which also provides for a much greater amount of open-space and other common amenities. This type of development as proposed is much more compatible with a recreational setting than the typical lot-by-lot development in a standard subdivision. It is, therefore, reasonable to conclude that the new proposal will have a less significant impact on the environment and, subsequently, a less significant impact in terms of property development considerations on the existing site features than the previous proposal.

The third item of concern, which has been voiced by the property owner to the north, is the legal issue regarding the covenants, which were recorded with the plat. When the plat is vacated, the covenants will be vacated with it, which is standard procedure and which must occur because covenants are applied to a project based on the project design, rather than based on inherent values in the land itself. The covenants themselves, if they are read carefully, clearly do not provide any benefit for the land owner, but instead, provide potential benefits for neighboring property owners at the expense of this property owner. In making a completely objective analysis of the proposal, it must be clear that the property owner who has vested title to the land and who has invested substantial time and effort into the project, must be afforded a greater weight in the decision making process than adjacent land owners who really may obtain cursory benefits from a given situation. It is not possible to conclude that the development of another project on this property which is carefully done and the vacation of the existing plat will have an adverse impact of significance on the adjoining properties. If these covenants are not removed with the vacation of the plat, then they would act in the same restrictive manner as the plat itself in eliminating development potential for the site and, subsequently, denying the property owner a fair and reasonable use of his property.

Another issue which has been brought up regards the access to the second division of the original Starwater development to the west of the

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proposed project. This property is owned by Mr. Hanson and it is understood that access should be provided to this property. However, once again, the interest and concerns of adjoining property owners should not be given more weight in the decision making process than the concerns of the land owner himself. In the proposal before you, access is being provided to Mr. Hanson's property from the Gold Creek Road in much the same location as indicated on the recorded plat. The only difference is involved with the extent of access that is being provided. In order for Mr. Hanson to develop or utilize his property, access must be provided. The proposal before you to vacate the property, includes provisions for easement rights to allow Mr. Hanson to do so. As a result, the concerns of Mr. Hanson should, therefore, be addressed and satisfied by this provision and the balance of the vacation process should be able to be completed without adverse impacts.

To summarize this information, I think it can be stated that the vacation of the Starwater plat, Division No. 1 will not have ^{an} adverse impact on adjoining property owners and will instead remove serious restrictions on the property which prevent the land owner from reasonable utilization of his property. The vacation is the first step in a continuing development process and certainly does not automatically authorize uncontrolled development on the property, and the owner is certainly attempting to come up with a proposal which is compatible with the environment and which is marketable in current economic times. If the existing plat is not vacated, the results will be that the property will remain vacant, since building permits cannot be issued due to the utility systems involved and an extreme hardship will be placed on the property owner. It is extremely important that the vacation procedure be completed, in order to provide for something else to be done on the property and we are, therefore, respectfully requesting the approval of the vacation petition, as submitted.

Thank you for your consideration of this information. We are looking forward to the public hearing on September 7, 1983.

Respectfully,



Thomas A. Barghausen, P.E.
President

TAB/jds

cc: Mr. Richard Toohey
Starwater Glen, Inc.

Mr. Mark Elgot
Murphy & McGowan Law Offices

75ml P.

Epperson, O'Shea and Straight, P.S.

Attorneys and Counselors at Law
Suite 300, The Globe Building
9725 S.E. 36th Street
Mercer Island, Washington 98040

CURTIS N. EPPERSON
JOHN T. O'SHEA
MATTHEW B. STRAIGHT

Phone: (206) 236-0432
Cable: OceanLaw

August 4, 1983

RECEIVED
AUG 8 1983

Kittitas County Commissioners
Kittitas County Courthouse
Ellensburg, WA 98926
Attn: Mr. Lumaco

1st _____ 2nd _____ 3rd _____
BOARD OF KITTITAS COUNTY COMMISSIONERS

Re: Hansen - Application to Vacate Plat of Starwater Division I

Dear Mr. Lumaco:

We are again writing to you on behalf of our client, Mr. Bob H. Hansen, Jr.

We have reviewed the letter from Mark Elgot, Mr. Toohy's attorney dated July 25, 1983. In that letter to the Kittitas County Commissioners Mr. Elgot proposed that the plat vacation be conditioned on granting Mr. Hansen an easement over a portion of the existing road shown on the plat of Starwater Division I. We have reviewed that legal description for the scope of the easement proposed by Mr. Toohy through Mr. Elgot.

We are pleased that Mr. Elgot acknowledged his client's implicit duty under the plat dedication to preserve access for Mr. Hansen. However, that plat indicated that Mr. Hansen would have the right to use all roads in Starwater Division I. The easement proposed by Mr. Elgot restricts Mr. Hansen to access to property only through the southernmost point at which Snowshoe Lane abuts Mr. Hansen's property. The Commissioners should not be misled that Mr. Toohy is proposing that Mr. Hansen have access over all of Snowshoe Lane. Rather, he is restricting this access to one small point. Unfortunately, the topography of Mr. Hansen's property makes Mr. Toohy's proposal unfeasible.

As a compromise, Mr. Hansen would not contest the plat vacation if his access was preserved over the entire length of Snowshoe Lane as shown on the plat map of Starwater Division I. This makes the most sense because the roads originally built on both properties by Reintree Corporation go onto Mr. Hansen's property at the intersection of Snowshoe Lane and Gold Creek Lane.

We have prepared a simple Grant of Easement to confirm the preservation of Mr. Hansen's legal access over the entire length of Snowshoe Lane. We request that the Commissioners condition their approval of the vacation of the plat of Starwater Division I upon the granting to Mr. Hansen of a perpetual, non-exclusive easement over the entire length of Snowshoe Lane to its intersection with the westerly boundary of the Gold Creek Lane. This easement should be in favor of Mr. Hansen, his successors and assigns, and all present and future owners and users of Mr. Hansen's property. This easement should be for the purposes of ingress, egress and utilities installation and maintenance.

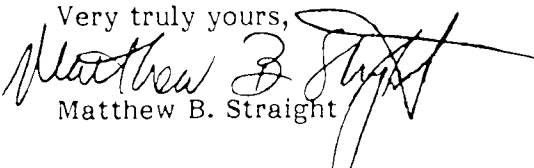
Very truly yours,

Matthew B. Straight

EXHIBIT "A"

THAT PORTION OF SECTION 11, TOWNSHIP 22 NORTH, RANGE 11 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE QUARTER CORNER OF SAID SECTION 11;
 THENCE NORTH 89°54'36" WEST ALONG THE SOUTH LINE OF SAID SECTION 11
 A DISTANCE OF 699.16 FEET TO INTERSECT THE EAST RIGHT OF WAY LINE OF
 GOLD CREEK ROAD #22019, SAID POINT OF INTERSECTION BEING A POINT ON
 THE TANGENT AND THE TRUE POINT OF BEGINNING;
 THENCE NORTHERLY ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND
 DISTANCES:
 NORTH 19°55'50" EAST, 129.47 FEET;
 THENCE ALONG A CURVE TO THE RIGHT 232.20 FEET ON A RADIUS OF 1,115.92
 FEET;
 THENCE NORTH 31°51'10" EAST, 176.91 FEET;
 THENCE ALONG A CURVE TO THE LEFT 256.49 FEET ON A RADIUS OF 268.73 FEET;
 THENCE NORTH 22°50'03" WEST, 49.59 FEET;
 THENCE ALONG A CURVE TO THE RIGHT 53.86 FEET ON A RADIUS OF 160.99 FEET;
 THENCE NORTH 3°40'00" WEST, 73.65 FEET;
 THENCE ALONG A CURVE TO THE LEFT 189.00 FEET ON A RADIUS OF 173.24 FEET;
 THENCE NORTH 66°10'33" WEST, 23.69 FEET
 THENCE ALONG A CURVE TO THE LEFT 112.97 FEET ON A RADIUS OF 316.48 FEET;
 THENCE NORTH 86°37'44" WEST, 78.37 FEET;
 THENCE ALONG A CURVE TO THE RIGHT 157.34 FEET ON A RADIUS OF 160.99 FEET;
 THENCE NORTH 30°37'58" WEST, 44.90 FEET;
 THENCE ALONG A CURVE TO THE RIGHT 46.24 FEET ON A RADIUS OF 65.49 FEET;
 THENCE NORTH 80°10'47" WEST, 60.00 FEET TO THE WEST RIGHT OF WAY LINE
 OF SAID ROAD;
 THENCE LEAVING THE SAID RIGHT OF WAY LINE AND FOLLOWING A PORTION OF
 THE SOUTHERLY BOUNDARY OF SKI TUR VALLEY - VIKINGDAL DIVISION PLAT,
 NORTH 30°37'53" WEST, 27.51 FEET;
 THENCE SOUTH 74°40'00" WEST, 199.22 FEET;
 THENCE NORTH 52°12'00" WEST, 349.00 FEET TO THE THREAD OF GOLD CREEK;
 THENCE LEAVING THE SAID SOUTHERLY BOUNDARY OF SKI TUR VALLEY - VIKINGDAL
 DIVISION PLAT AND FOLLOWING ALONG THE THREAD OF GOLD CREEK SOUTH
 54°00'15" WEST, 210.00 FEET;
 THENCE SOUTH 42°00'00" WEST, 240.00 FEET;
 THENCE SOUTH 21°00'00" WEST, 250.00 FEET;
 THENCE SOUTH 7°00'00" WEST, 200.00 FEET;
 THENCE SOUTH 37°00'00" WEST, 160.00 FEET;
 THENCE SOUTH 66°00'00" WEST, 340.00 FEET;
 THENCE SOUTH 89°00'00" WEST, 235.00 FEET;
 THENCE SOUTH 80°00'00" WEST, 64.35 FEET TO THE INTERSECTION OF THE
 THREAD OF GOLD CREEK WITH THE WEST LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID
 SECTION 11;
 THENCE ALONG SAID WEST LINE TO THE SOUTHWEST CORNER OF SAID SECTION 11,
 SOUTH 0°24'40" WEST, 424.90 FEET;
 THENCE ALONG THE SOUTH LINE OF SAID SOUTHWEST $\frac{1}{4}$ SOUTH 89°54'36" EAST,
 1,944.04 FEET TO THE TRUE POINT OF BEGINNING.
EXCEPT THAT PORTION, THEREOF, LYING WITHIN THE PLAT OF STARWATER,
 DIVISION 1, AS PER PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGES
 45, 46 AND 47, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON.

END OF EXHIBIT "A"

Starwater Access Easement

Job # 1050

July 15, 1983

LEGAL DESCRIPTION

An easement for ingress and egress over that portion of Section 11, Township 22 North, Range 11 East, W.M., in Kittitas County, Washington, said easement lying 30.00 feet on each side of the following described centerline:

Commencing at the South quarter corner of said Section 11;
Thence North $89^{\circ} 54' 36''$ West along the South line of said Section a distance of 762.94 feet to intersect the West right-of-way line of U.S.F.S. Gold Creek Road No. 22019, said point of intersection being a point on a tangent;
Thence Northerly along the West margin of said right-of-way North $19^{\circ} 55' 50''$ East 151.11 feet to the TRUE POINT OF BEGINNING of said easement centerline;
Thence bearing North $70^{\circ} 04' 10''$ West 66.53 feet;
Thence bearing along a curve to the left 157.94 feet on a radius of 380.00 feet;
Thence South $86^{\circ} 07' 00''$ West 112.00 feet;
Thence bearing along a curve to the right 320.01 feet on a radius of 212.00 feet, the terminal point of said easement centerline.

Exhibit E

REC'D JUL 26 1983

LAW OFFICES OF
MURPHY & MCGOWAN
SUITE 2100 FOURTH & BLANCHARD BLDG.
2121 FOURTH AVENUE
SEATTLE WASHINGTON 98121

(206) 622-5642
(206) 622-5722

THOMAS H. MURPHY
JAMES P. MCGOWAN
MARK S. ELGOT
RICHARD J. MOORE

July 25, 1983

Kittitas County Commissioners
Kittitas County Courthouse
Ellensburg, WA 98926

Re: Application to vacate Plat of Starwater Division I

Dear Commissioners:

I represent the owner of the Plat of Starwater Division I, except Lot 9. I was present at the plat vacation hearing on July 12th in your chambers. I am writing this letter to outline my client's position in favor of permitting the plat to be vacated in respect of three issues.

1. Ownership of the Plat. The Plat of Starwater Division I, except Lot 9, is owned by Pacific West Marketing, Inc., a Washington corporation controlled by my client, Richard M. Toohey. Mr. Toohey also controls Starwater Glen, Inc., the entity which will develop the property. The three cabins presently in existence are located on Lots 7, 8 and 9 of the Plat of Starwater Division I. Lots 7 and 8 are owned by Pacific West Marketing, Inc. Title to Lot 9 is presently in John S. Woodburne, trustee in bankruptcy for Kingco Excavating, Inc.

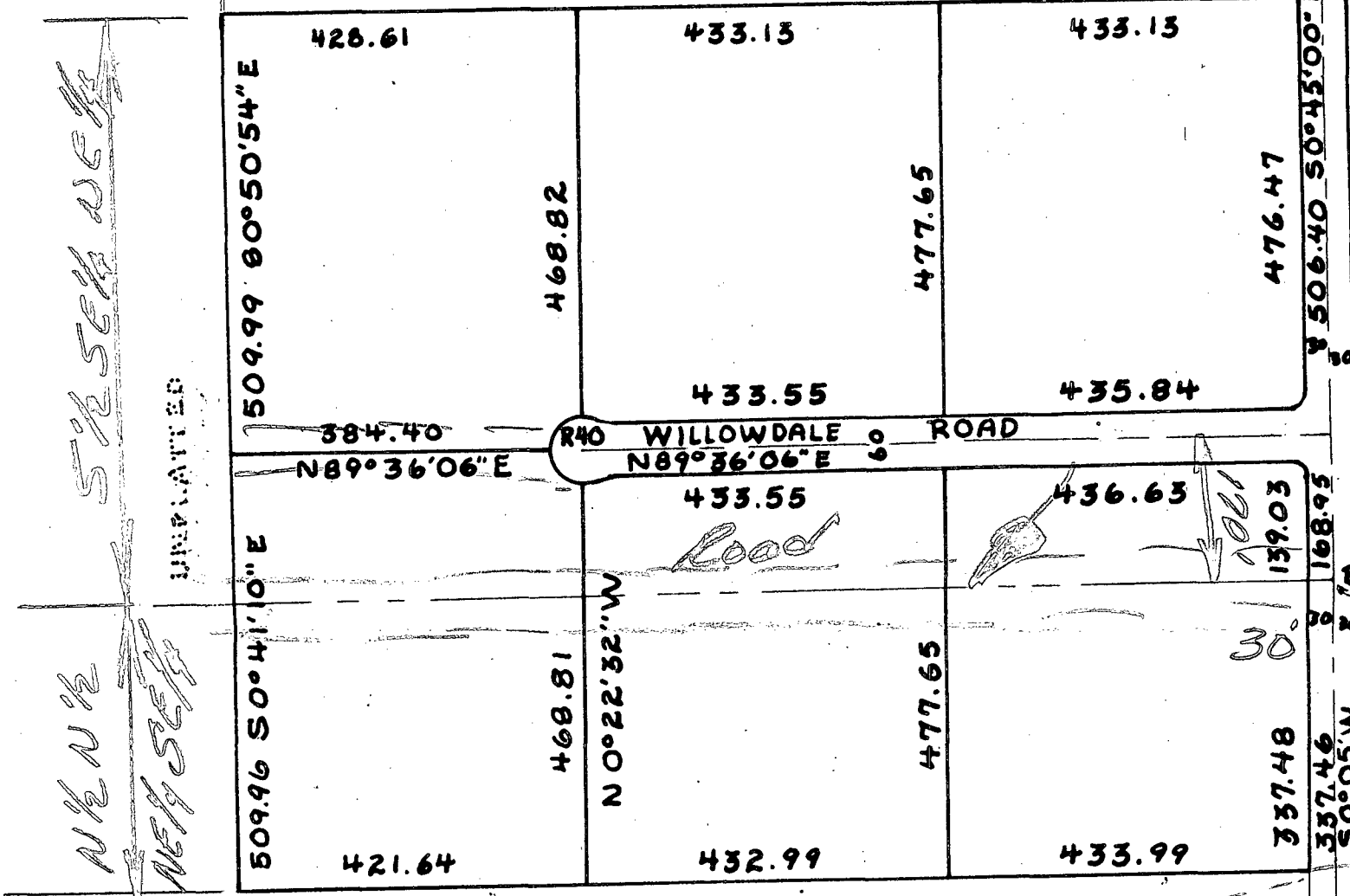
My client, Richard M. Toohey, attempted to redeem Lot 9 from Kingco Excavating, Inc. which was purchaser at the sheriff's sale, but Kingco objected and the Kittitas County Superior Court refused to allow redemption. The matter was appealed to Division III of the Court of Appeals. That appeal has been dismissed by stipulation. The stipulation requires the trustee in bankruptcy to auction the property. The sale has not yet occurred. A copy of the Court of Appeals Mandate and stipulation for dismissal is attached hereto as Exhibit A.

2. Restrictive Covenants. At the public hearing lessees of lots in the Plat of Ski Tur Valley - Vikingdal

PROPOSED PLAT
WILLOWDALE

UNPLATTED

N 87° 45' 35" E



UNPLATTED
S 1/2 SE 1/4 NE 1/4
NE 1/4 SE 1/4

*discussed with
to Comm on
8-28-67.
1. rd Ext
west side of plot
16 OK.
2. Road on Sec
line
OK of good
Hanning Comm*

UNPLATTED
29
E 1/4 CORNER
SECTION 30
TYPE OF
CORNER

UNPLATTED

S 89° 26' 52" W

SCALE 1" = 20'

200'

S 1/2 SE 1/4 NE 1/4 AND N 1/2 N 1/2 NE 1/4 SE 1/4
ALL IN SECTION 30, T18N, R19E, W.M.
KITITAS COUNTY, WASHINGTON.
PLATTOR: STOCKDALE-YOUNG AGENCY
221 EAST FOURTH
ELLENSBURG, WASHINGTON

PREPARED BY: JEROLD D. O'HARE
PROFESSIONAL LAND SURVEYOR

Scale 1" = 100'

*Plat Received
8-21-67
from Co. Comm*

Division objected on the basis of restrictive covenants claimed to affect future development of the Plat of Starwater Division I. Some time prior to 1979, several Ski Tur lessees commenced a lawsuit in King County Superior Court under Cause No. 841764. The King County Superior Court entered a judgment and decree on August 6, 1979 imposing the covenants and restrictions cited by the Ski Tur lessees at the hearing as a condition of further development of the Plat of Starwater Division I. The specific covenants were attached to Judge Schofield's judgment and were recorded in the office of the Kittitas County Auditor. A copy of this judgment is attached hereto as Exhibit B.

Judge Schofield's judgment, however, was appealed to Division I of the Washington Court of Appeals which reversed the Superior Court decision respecting restrictions and future development of the Plat of Starwater Division I. A certified copy of the Court of Appeals' mandate and decision has been recorded recently in the office of the Kittitas County Auditor. A copy of that certified copy is attached hereto as Exhibit C. The Court of Appeals opinion can also be found at 28 Wn. App. 814, 626 P.2d 1027 (1981). The effect of the Court of Appeals decision is to make the claimed covenants and restrictions of Ski Tur Valley - Vikingdal Division unenforceable. I respectfully urge you to read the Court of Appeals opinion for the factual background and rationale of the court's decision.

3. Access. Two questions of access have arisen -- (a) access to the Plat of Starwater by its owners; and (b) access of Bob H. Hansen, Jr. to an adjacent parcel.

(a) Access to the Plat of Starwater Division I. Record title to the fee interest in the access road to the Plat of Starwater Division I is now held by Bob H. Hansen, Jr. A copy of Mr. Hansen's deed is attached hereto as Exhibit D. However, his fee is subject to an easement in favor of the owners of the Plat of Starwater Division I. The pertinent language from the deed is as follows:

Kittitas County Commissioners
July 25, 1983
Page Three

Subject to an easement affecting a portion of said premises and other land (being known as Gold Creek Road No. 22019) for access road in favor of the United States of America, recorded May 24, 1967, under Auditor's No. 338742; . . . road provisions as contained in the dedication of the Plat of Ski Tur Valley - Vikingdal Division wherein the dedicat- or instead of dedication of roads granted for- ever unto all lessees of lots in the plat and all future plats in Section 11, Township 22 North, Range 11 East, W.M., an undivided interest in all roads shown as private roads, said matter affecting that portion of said premises lying within the unnamed road of said plat of Ski Tur Valley. Said road is also known as Gold Creek Road and is also known as Starwater Drive, is [sic] shown on the face of the Plat of Starwater, Division I;

Thus, access to the Plat of Starwater Division I is preserved by the dedication in the Plat of Ski Tur Valley - Vikingdal Division and the deed to Bob H. Hansen, Jr.

(b) Access for Bob H. Hansen, Jr. across the Plat of Starwater Division I:

The property belonging to Bob H. Hansen, Jr. as described in the deed attached hereto as Exhibit E is dis- continuous in that it consists of fee title to a portion of the Gold Creek Road on the one hand and the bulk of his property on the other. The latter lacks access except over the Plat of Starwater Division I. The road dedication now contained in the Plat of Starwater Division I provides access for "all owners of lots in this plat and all future plats in Section 11, Township 22 North, Range 11 East, W.M." To the best of our knowledge no property in Section 11 has been platted subsequent to Starwater Division I, and Mr. Hansen has not commenced plat application.

Mr. Hansen and Mr. Toohey are presently engaged in litigation in King County Superior Court over a promise by Mr. Hansen's predecessors in interest to convey the property to Mr. Toohey. Settlement negotiations have taken place, but final agreement has not been reached. In the event no

Kittitas County Commissioners
July 25, 1983
Page Four

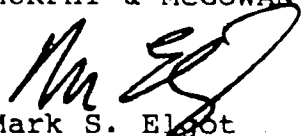
settlement has been reached by the time this matter again comes before the Commissioners, my client proposes that the plat vacation be conditioned on granting Mr. Hansen an easement over that portion of the existing road shown on the Plat of Starwater Division I as Showshoe Lane, as described in Exhibit E attached hereto.

In view of the fact that Mr. Hansen purchased the property and accepted a deed acknowledging access problems to his property (see the last paragraph of Exhibit C), and Mr. Toohey's desire to control traffic and traffic patterns in his planned development, this proposal is a reasonable compromise that will assure Mr. Hansen of access to his property.

Please do not hesitate to call or write if I can provide any further information or answer any questions for the Commissioners or other county officials.

Yours very truly,

MURPHY & MCGOWAN



Mark S. Elgot
Attorneys for Richard M. Toohey

MSE:pja

Enclosures

cc: Tom Pickerel, Kittitas Cty. Planning Dept.
Joseph Panatoni, Prosecuting Atty.
Richard M. Toohey
Thomas Barghausen

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

COPY RECEIVED

TERRENE EXCAVATORS, INC.,
Plaintiff,
v.
JIM GRESS, et ux., d/b/a INTER-MOUNTAIN CONSTRUCTION, et al.,
Defendants,
RICHARD M. TOOHEY,
Intervenor/Appellant,
KINGCO EXCAVATING, INC.,
Respondent.

APR 27 1983

LAW OFFICES OF
MURPHY & MCGOWAN

MANDATE

No. 5323-III-7

Kittitas County No. 22056

Pursuant to Order of Dismissal granted by Commissioner Keyes on April 25, 1983.

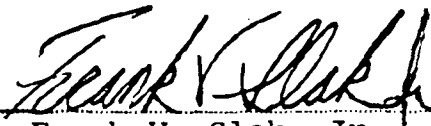
The State of Washington to: The Superior Court of the State of Washington

in and for Kittitas County

This is to certify that the Court of Appeals of the State of Washington, Division III, considered and granted a motion to dismiss the appeal in the above entitled case on April 25, 1983. Accordingly, this cause is mandated to the Superior Court from which this appeal was taken for further proceedings in accordance with the determination of that court.

cc: Mark S. Elgot
Michael J. Reynolds
John S. Woodburne
Sheena R. Aebig
Sam B. Franklin

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Spokane, this 25th day of April, 1983



Frank V. Slak, Jr.
Clerk of the Court of Appeals, State of Washington
Division III

Exhibit A

THE COURT OF APPEALS
 OF THE
 STATE OF WASHINGTON
 DIVISION III

TERRENE EXCAVATORS, INC.,)
)
 Plaintiff,)
)
 v.)
)
 JIM GRESS, et ux., d/b/a)
 INTERMOUNTAIN CONSTRUCTION,)
 et al.,)
)
 Defendants,)
)
 RICHARD M. TOOHEY,)
)
 Intervenor/Appellant,)
)
 KINGCO EXCAVATING, INC.,)
)
 Respondent.)

NO. 5323-III-7
 STIPULATION AND
 ORDER OF DISMISSAL

MAR 25 PM 3:05

COME NOW intervenor/appellant Richard M. Toohy
 by and through his attorney Mark S. Elgot of Murphy
 & McGowan and John S. Woodburne, trustee in bankrupt-
 cy and substitute respondent for Kingco Excavating,
 Inc., by and through his attorney Sheena R. Aebig of
 Shulkin, Hutton & Bucknell, P.S., Inc. and make the
 following stipulation on the basis that the appeal
 is probably meritorious but the value of the subject
 property is uncertain, and intervenor/appellant now
 declines to exercise his asserted right of redemption:

1. This appeal may be dismissed; and
2. John S. Woodburne, as Trustee for the bankruptcy estate of Kingco Excavating, respondent herein, shall offer the estate's interest in the subject property for sale by notice to creditors, with copies of such notice to go to the appellant and his attorney, Mark S. Elgot.

DATED this 21 day of April, 1983.

MURPHY & MCGOWAN


By



Mark S. Elgot
Attorney for Intervenor/Appellant

SHULKIN, HUTTON & BUCKNELL, INC. P.S.

By



SHEENA R. AEBIG,
Attorney for Respondent

STIPULATION AND ORDER
OF DISMISSAL - 2

O R D E R

THIS MATTER having come on for consideration upon the foregoing stipulation of the parties it is hereby

ORDERED that the foregoing stipulation is approved and the parties ordered to comply therewith; and it is further

ORDERED that this appeal shall be, and the same hereby is, dismissed.

DONE IN OPEN COURT this 25th day of April, 1983.


JUDGE/COMMISSIONER

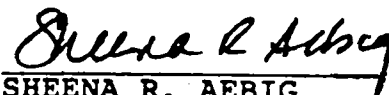
Presented By:

MURPHY & MCGOWAN

By: 
MARK S. ELGOT
Attorneys for Intervenor/Appellant

Notice of Presentation
Waived and Approved for Entry:

SHULKIN, HUTTON & BUCKNELL, P.S., INC.

By: 
SHEENA R. AEBIG
Attorneys for Respondent

7
George Muller & Porter, P.S.
19 AUG 7 AM 10:45
19 SEP 7 AM 11:56

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

CERTIFIED
COPY

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

RALPH W. and GERALDINE M. ANDERSON,
husband and wife, et al.,
Plaintiffs,
vs.
SECTION 11, INC., et al.,
Defendants.

NO. 841764
JUDGMENT

The undersigned Judge of the above-entitled court, having
heretofore entered his Findings of Fact and Conclusions of Law,
and having heard the argument of counsel and being otherwise
fully advised in the premises enters judgment herein as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The annual rental payable by each plaintiff to Section 11, Inc. for the year September 1, 1976 to August 31, 1977 is \$250.00.
2. The annual rental payable by each plaintiff to Section 11, Inc. (or to Reintree Corporation in the event it acquires title to section 11) for the years September 1, 1978 to August 31, 1981 is \$335.00.
3. Section 11, Inc. owes each plaintiff for excess rents previously paid as follows: for 1976-77, the sum of \$150.00; for 1977-78, the sum of \$65.00. Each plaintiff owes defendant additional rent for the year 1978-79 in the sum of \$35.00. These amounts should be offset against each other, with a resulting net credit to each plaintiff of \$180.00. This credit should be applied against each plaintiff's 1979-80 rent with the result that for that year each plaintiff shall pay the sum of \$155.00 annual rent to Section

Judgment - 1.

Pat

LAW OFFICES OF
GEORGE MULLER & PORTER, P.A.
1300 PEARL NATIONAL BANK BUILDING
POST OFFICE BOX 2226
SEATTLE, WASHINGTON 98111
TELEPHONE (206) 524-6200

George Muller & Porter

2018
548
1-70

Exhibit B

1 11, Inc.

2 4. In the event there is no change in the status of the
3 Master lease by August 31, 1981 and Section 11, Inc. or its
4 successor continues to lease the section, the rental formula set
5 forth in the June 4, 1979 Memorandum Opinion should be utilized,
6 and if no further lots are platted each lot's rent should be
7 increased by an annual amount equivalent to 1/70 of the amount of
8 rent increase imposed under the Master lease in excess of \$15,000.00.
9 If additional lots are platted, the increase in the Master lease
10 rent should be passed on proportionately to them as well.

11 5. In the event Reintree Corporation acquires the fee
12 ownership of section 11, its future development of any and all
13 portions of section 11 (the entire 640 acres) as well as its
14 management of the Vikingsdal development must be conducted in such
15 a manner as to preserve to the plaintiffs all of plaintiffs' rights
16 under their lease agreement with Section 11, Inc. The rent for the
17 years following August 31, 1981 shall be determined by taking the
18 rent established by this court--\$335.00--and increasing (or decreas-
19 ing) it by the percentage change in the United States Bureau of
20 Labor Statistics Consumer Price Index for All Urban Consumers
21 (reference base 1967=100) for the City of Seattle occurring during
22 the preceding five years. Every five years thereafter the rent
23 shall--at the option of the property owner--be similarly adjusted.

24 6. The plaintiffs shall have the right of freedom of movement
25 generally throughout the 640 acres of section 11 preserved as
26 contemplated by paragraph 5 of their respective leases.

27 7. Reintree Corporation shall develop the remainder of the
28 640 acres in a circular-shaped lot type of development consistent
29 with and preserving to plaintiffs the rights they contracted for in
30 their leases with Section 11, Inc.

31 8. The proposed development of "Starwater Divisions" as set
32 Judgment - 2

LAW OFFICES OF
GEORGE HULL & PORTER, P.A.
1800 PEPPER NATIONAL BANK BUILDING
POST OFFICE BOX 2286
SEATTLE WASHINGTON 98111
TELEPHONE (206) 524-8800

120 549

1 forth in the Final Environmental Impact Statement is violative of
2 plaintiffs' rights and defendants are hereby enjoined from pro-
3 ceeding to develop the remainder of the 640 acres in a pattern
4 where each lot is contiguous with adjoining lots, unless coven-
5 ants and restrictions are adopted preserving to plaintiffs the
6 rights they contracted for in their leases with Section 11, Inc.

7 9. Defendants are enjoined from proceeding with any further
8 development of the "Starwater Divisions" except in conformity
9 with the covenants and restrictions attached hereto as Exhibit A
10 which are hereby found by this court to be consistent with the
11 preservation of plaintiffs' rights under their lease agreements
12 with Section 11, Inc. and which shall be included in all future
13 plats in section 11 proposed by defendants, their successors and
14 assigns.

15 10. All owners of lots in Ski Tur Valley - Vikingdal
16 Division shall become members of Ski Tur Valley Maintenance
17 Company and shall pay all dues and assessments levied or imposed
18 by it, shall be eligible to exercise all rights of membership in
19 said company to the same extent as lessees in Ski Tur Valley -
20 Vikingdal Division and shall comply with all rules and regula-
21 tions established by it. All assessments and dues shall be a
22 lien on the lots from the date due until paid. The Ski Tur
23 Valley Maintenance Company shall have the right to foreclose the
24 lien of any unpaid assessment in the same manner as a mortgage
25 and may recover all costs of such action and a reasonable attor-
26 ney's fee as part of the judgment of foreclosure.

27 11. Plaintiffs' claims under the Interstate Land Sales Full
28 Disclosure Act are dismissed with prejudice.

29 12. Plaintiffs' claims under the Washington Land Develop-
30 ment Act are dismissed with prejudice.

31 13. Plaintiffs' claims under the Washington Consumer Pro-
32 tection Act are dismissed with prejudice.

Judgment - 3

LAW OFFICES OF
GEORGE HULL & PORTER, P.C.
1200 PEOPLES MARKET, 3RD FLOOR
POST OFFICE BOX 1200
SEATTLE, WASHINGTON 98111
TELEPHONE (206) 454-0000

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14. Plaintiffs are granted judgment against defendants for their taxable costs incurred herein.

DONE IN OPEN COURT this 6th day of August, 1979.

Jack P. Schollfield
Jack P. Schollfield, Judge

Presented by:

GEORGE HULL & PORTER, P.S.

By *Lyman G. Hull*
Lyman G. Hull
Attorneys for Plaintiffs

Approved as to Form and Notice of Presentation Waived:

KELEHER & MURPHY
By *James McCowan*
James McCowan
Attorneys for Defendants.

Judgment - 4

LAW OFFICES OF
GEORGE HULL & PORTER, P.S.
1900 PUEBLO NATIONAL BANK BUILDING
POST OFFICE BOX 2280
SEATTLE, WASHINGTON 98111
TELEPHONE (206) 424-8222

120-551

1. All improvements on any lot which are permitted under the terms of these covenants shall be erected within a circular cabin site having a radius of not more than forty feet. All owners of lots in Starwater Division I and all lessees and owners of lots in plat of Ski Tur Valley - Vikingdal Division shall have a free right of passage at all times across and through all portions of lots in Starwater Division I outside the 40-foot cabin site above described and shall not be hindered or interfered with in any respect whatsoever by artificial boundaries or barriers, and through and across all common areas. All lots not sold by the developer shall be deemed common areas for purposes of free access until sold. The above-described lots shall be used for recreation or residential purposes for a single family only, or for more than one family upon consent of Reintree Corporation; provided, however, that Reintree Corporation may designate sites for swimming pools, tennis courts, and other recreational structures, necessary commercial facilities or utilities and transfer said sites to others.

2. The common areas shall remain as nearly as possible in their natural state.

3. All plans for construction on any building site shall conform to county standards and the standards set forth herein. All lots shall at all times be maintained in a neat, clean and insofar as possible natural state outside the immediate confines of actual construction on the building site.

4. No trees or shrubs shall be cut or timber removed from any lot except that which is essential to the preparation of the building site, driveway or walkway.

EXHIBIT "A"

5. [] lot is subject to the following additional covenants:

- (a) No fences or other site dividers or other perimeter markings shall be established;
- (b) All structures must be enclosed and exteriors finished within one-year of commencement of construction;
- (c) All chimneys must be equipped with spark guards of forest service approved type;
- (d) Outdoor fireplaces on individual homesites must be placed within the 40-foot cabin site;
- (e) No camping or parking of camper trucks, house trailers or similar vehicles will be allowed on or near building sites except during actual construction of a permanent dwelling;
- (f) Guest camping will be permitted only under such rules as may be established from time to time by the homeowners' association;
- (g) Only designated group campfire areas may be used and no fire left unattended;
- (h) No hunting is permitted under any circumstance;
- (i) Use of firearms must be confined to specifically designated areas under rules approved by the homeowners' association;
- (j) Owners will control all predatory pets in order to protect wildlife;
- (k) Planting of domesticated lawn grasses, plants, shrubs or trees must be confined to the limits of dwellings in attached planters;
- (l) Reasonable transplanting of natural growth is permitted;

(m) Sashed and downed timber may only be cut for firewood for personal use within Starwater;

(n) Automobiles and other vehicles may be parked only in designated parking areas;

(o) A ten mile an hour speed limit on private roads will apply to all vehicles, and no vehicles will be permitted which in any way create a nuisance;

(p) No trash, garbage or refuse shall be allowed to accumulate on any lot, and all refuse containers shall be placed in secure containers;

(q) No chainsaws or other noisy equipment may be operated before 9:00 a.m. or after 6:00 p.m., except for original construction and development.

6. The foregoing covenants are covenants running with the land and are created for the benefit of all owners in Starwater Division I, and lessees in plat of Ski Tar Valley - Vikingdal Division and may be enforced by any of said persons, and by Ski Tar Valley Maintenance Company, and shall be enforced by Reintree Corporation and/or Section 11, Inc. so long as either one of said corporations owns any interest in any lots in section 11. Reintree Corporation covenants and agrees with all parties benefited hereby that in the event it fails to enforce any of the foregoing covenants promptly upon notice of any of the parties benefited thereby that such parties or persons or Ski Tar Valley Maintenance Company may take such action as it or they deems appropriate or necessary to enforce said covenants the expense of which Reintree

corporation and/or Section 11, Inc. jointly and severally agree
promptly to pay together with all costs and fees incurred in any
enforcement action if the party prevails.

4.

120-555



I, KENNETH S. HELM, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Superior Court at my office at Seattle this 14th day of AUG 1970.

KENNETH S. HELM, Clerk of the Superior Court
By *[Signature]*
Deputy Clerk

120-112-556

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

**CERTIFIED
C.O.P.Y**

RALPH R. and GERALDINE M. ANDERSON,)
 husband and wife; CHARLES BARZEN,)
 a single man; JAMES and LOUISE)
 BENNETT, husband and wife; SCOTT)
 BIDDLE, for his separate estate;)
 CLAUDIA A. DAVIS, a single woman;)
 MICHAEL and PATRICIA DONOGHUE,)
 husband and wife; TERRENCE W. and)
 CATHERINE J. EVANS, husband and)
 wife; LEON C. GOODMAN, for his)
 separate estate; GORDON M. and)
 EHLLI J. GRAY, husband and wife;)
 KENNETH R. HARWOOD and 900 Empire,)
 Inc., a corporation; NORMA and)
 EVERETT HEDAH, husband and wife;)
 ROBERT E. and NANCY JENSEN, husband)
 and wife; ROBERT and MARCELLA KAY)
 BRAZEN, husband and wife; THOMAS)
 F. and THERESA M. MAHONEY, husband)
 and wife; JOHN and ELEANOR MONROE,)
 husband and wife; HELEN NIEBERL,)
 for her separate estate; EDWARD)
 and GAIL SWAN, husband and wife;)
 and JAMES STOUARD and PETE)
 STOUARD, d/b/a STOUARD BROTHERS,)

Respondents,

v.

SECTION 11, INC., a Washington)
 corporation; BURLINGTON NORTHERN,)
 INC., a corporation; REINTREE)
 CORPORATION, a Washington)
 corporation,)

Appellants.

MANDATE

No. 7952-2-I

King County No. 841764

JUDGMENT NUMBER 11011

CLERK
SEATTLE, WA

01 JUN 22 09:41

The State of Washington to: The Superior Court of the State of Washington
 in and for King County

is to certify that the opinion of the Court of Appeals of the State
 of Washington, Division I, filed on April 9, 1981, became the decision

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Exhibit C

JUN 24 1981

terminating review of this court in the above entitled case on June 18, 1981. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Mandate after opinion is filed.

cc: Mr. James P. McGowan

George, Hull & Porter, P.S.
Mr. Lyman W. Hull
Reporter of Decisions
Hon. Jack P. Scholfield
Presiding Judge

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the seal of said
Court at Seattle, this 18th day of
June, 1981


RICHARD D. TAYLOR

Clerk of the Court of Appeals, State of Washington,
Division I.



FILE

IN CLERKS OFFICE
COURT OF APPEALS
STATE OF WASHINGTON - DIVISION I

DATE 4/9/81

Frank James
CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RALPH R. and GERALDINE M. ANDERSON,)
husband and wife; CHARLES BARZEN,)
a single man; JAMES and LOUISE)
BENNETT, husband and wife; SCOTT)
BIDDLE, for his separate estate;)
CLAUDIA A. DAVIS, a single woman;)
MICHAEL and PATRICIA DONOGHUE,)
husband and wife; TERRENCE W. and)
CATHERINE J. EVANS, husband and)
wife; LEON C. GOODMAN, for his)
separate estate; GORDON M. and)
EHLI J. GRAY, husband and wife;)
KENNETH R. HARWOOD and 900 Empire,)
Inc., a corporation; NORMA and)
EVERETT HEDAHL, husband and wife;)
ROBERT E. and NANCY JENSEN, husband)
and wife; ROBERT and MARCELLA KAY)
BRAZEN, husband and wife; THOMAS)
F. and THERESA M. MAHONEY, husband)
and wife; JOHN and ELEANOR MONROE,)
husband and wife; HELEN NIEBERL,)
for her separate estate; EDWARD)
and GAIL SWAN, husband and wife;)
and JAMES STOUARD and PETE)
STOUARD, d/b/a STOUARD BROTHERS,)

Respondents,

v.

SECTION 11, INC., a Washington)
corporation; BURLINGTON NORTHERN,)
INC., a corporation; REINTREE)
CORPORATION, a Washington)
corporation,)

Appellants.

NO. 7952-2-1

DIVISION ONE

FILED: APR 9 1981

CORBETT, J. -- Section 11, Inc. was formed to develop a section of land (approximately 640 acres) which it leased from Northern Pacific Railway (now Burlington Northern) for a term of 99 years. The lease permitted sublease of recreational homesites. Fifty acres were platted

into a development called Vikingdal, consisting of 101 circular, non-contiguous lots. Only 29 of the lots were leased; plaintiffs are sublessees.

This action arose when Section 11, Inc. demanded from plaintiffs a substantial increase in lease payments. Section 11, Inc. had encountered financial difficulty and sought to pass on to sublessees all of the rental payments owed to Burlington Northern on the master lease, contending that the following clause in the subleases so provided:

Upon August 31, 1971 and every five years thereafter, the annual rental shall, at the option of the lessor, be adjusted to reflect any increase in the rental between lessor and the Northern Pacific Railway Co. pursuant to the terms of their lease. . . .

The trial court considered the terms of the sublease, promotional statements made by Section 11, Inc., the history of development and prior rental charges. It found that the parties did not intend that 100 percent of the increase would be paid by such a small number of lessees as the present 29. The court then found that the increase should be borne by approximately 70 percent of the Vikingdal lots. This was held to produce a reasonable profit for Section 11, Inc. over and above retiring the annual rental charged by the railroad. As to future rental falling due after the 1981 anniversary date, the court additionally adjusted the basic rental by reference to the Consumer Price Index. The court, in effect, found the leases to be ambiguous and applied equitable principles to determine the intent of the parties and fix a reasonable sum as the rental to be paid. This is within the equitable power of the court and it was not error for the court to so adjust the required rental. Diettrich v. J. J. Newberry Co., 172 Wash. 18, 19 P.2d 115 (1933); Young v. Nelson, 121 Wash. 285, 209 P. 515 (1922).

After plaintiffs leased their lots, defendant, Reintree Corporation, acquired all of the shares of Section 11, Inc. Reintree also acquired an option from Burlington Northern to purchase a fee interest in the 640 acres. Reintree then proposed to develop Starwater Divisions which consisted of platting the remainder of the 640 acres (outside Vikingdal) into rectangular lots contiguous with adjoining lots. This differed substantially from the Vikingdal plat of circular noncontiguous lots and had the effect of denying freedom of movement throughout the 640 acres, threatening the pristine character of the forest environment.

Although the original and first and second amended complaints sought to enjoin future development of Section 11 unless the Vikingdal development plan was utilized, the parties agreed to and entered a pre-trial order, pursuant to CR 16(b), which did not include this as an issue to be litigated. However, during the course of the trial, evidence addressed to the future development was introduced by the plaintiffs. The court found that the future development of Section 11 must be conducted in such a manner so as to preserve plaintiffs' rights under their lease agreements with Section 11, Inc. and entered judgment enjoining Reintree as well as Section 11, Inc. from proceeding with development of the Starwater Divisions except in conformity with the covenants and restrictions found in the plaintiffs' subleases. The defendants have appealed, urging in part, that the issue is outside the scope of the pretrial order.

If a new issue is introduced after the parties have entered into a pretrial order, the court may consider the issue and modify the order to prevent manifest injustice. Esmieu v. Schrag, 92 Wn.2d 535, 538,

598 P.2d 1366 (1979). CR 15(b) provides that:

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. . . .

(Emphasis added.) No objection was made to the introduction of evidence pertinent to this issue and there is no showing that the defendants were surprised or in some way prejudiced. It is well settled that objections to evidence cannot be raised for the first time on appeal. Sepich v. Department of Labor and Indus., 75 Wn.2d 312, 319, 450 P.2d 940 (1969). It was therefore not error for the trial court to admit the evidence and consider it in reaching its judgment. However, the judgment was erroneous for other reasons.

The trial court found that in the event Reintree acquires the fee, its future development of Section 11 shall be in circular-shaped lots, preserving to the plaintiffs their freedom of movement throughout the section and other rights inherent in their subleases. This portion of the judgment is predicated upon "finding of fact" No. 22.

In the event Reintree Corporation does acquire the title to section 11 as contemplated, this would have the effect of merging the lessor's interest with the lessee's interest of the Master lease and would leave Reintree Corporation in a position where it has all of the responsibility of Section 11, Inc. to the plaintiff lessees pursuant to their respective lease agreements with Section 11, Inc. Reintree Corporation has acquired all of the stock of Section 11, Inc., has taken over the operation of Section 11, Inc. and has conducted itself at all times since as the lessor under the subleases involved in this case.

Although denominated a finding of fact, it would be more properly con- noted a conclusion of law. As such, it need not be accepted as a verity and is subject to review by this court. Alexander & Alexander, Inc. v. Wohlman,

19 Wn. App. 670, 684, 578 P.2d 530 (1978). We find it and the corresponding portion of the judgment to be in error. There was no evidence to justify disregard of the corporate entities of Reintree and Section 11, Inc., and there was no merger of estates so that the ownership of the fee by Reintree would encumber its fee interest by covenants contained in or implied from the subleases.

Reintree Corporation is a real estate developer that had operated in the Greater Seattle area for approximately 6 years before this suit was commenced. Its gross sales were 2 1/2 to 3 million dollars annually; it took an option on Section 11, Inc. stock and was thereby authorized to negotiate with Burlington Northern on behalf of Section 11, Inc. to fix the rental owed under the master lease. At the same time, it negotiated on its own behalf to purchase the underlying property. It then acquired all of the shares in Section 11, Inc. and proceeded to staff it with identical officers and directors as were running Reintree. Separate books and records were maintained.

Here subsidiary status does not permit disregard of the corporate entity. Rena-Ware Distributors, Inc. v. State, 77 Wn.2d 514, 518, 463 P.2d 622 (1970). The decision whether to disregard the corporate entity must be made on the basis of the following test:

1. (a) If there is an overt intention to regard or disregard the corporate entity, effect will be given thereto unless so to do will violate a duty owing.

(b) The overt intention is that of the corporation whose entity is sought to be disregarded or of the person or persons owning its stock and sought to be visited with the consequence of regard or disregard of the corporate entity.

(c) The duty owing must be owing to the person seeking to invoke the doctrine, and such duty may arise from common law and equity, contract or statute.

Horowitz, Disregarding the Entity of Private Corporations, 15 Wash. L. Rev. 1, 11 (1940). This test has been expressly cited as the law.

Frigidaire Sales Corp. v. Union Properties, Inc., 14 Wn. App. 634, 640, 544 P.2d 781 (1975); J. I. Case Credit Corp. v. Stark, 64 Wn.2d 470, 475-76, 392 P.2d 215 (1964), and relied upon without citation in three opinions written by Justice Horowitz. Morgan v. Burks, 93 Wn.2d 580, 611 P.2d 751 (1980); Soderberg Advertising, Inc. v. Kent-Moore Corp., 11 Wn. App. 721, 732, 524 P.2d 1355 (1974); Harrison v. Puga, 4 Wn. App. 52, 63-64, 480 P.2d 247 (1961). Whenever there is a parent/subsidiary corporate relationship, there is a potential for confusion of the corporate identities. Here, however, after Reintree acquired the Section 11 stock, it scrupulously observed the separate character of Section 11 and Reintree in dealing with the plaintiffs. Thus, Reintree took evident pains to regard the separateness of the entities, thereby manifesting an intent to regard the corporate entities.

Giving effect to this intent will violate no duty owed to the plaintiffs. Whether the corporate interest is regarded or disregarded, the plaintiffs remain in the same position, i.e., subject to the master lease. It is not acquisition of the Section 11, Inc. stock that permits Reintree to develop Starwater as proposed, rather it is purchase of fee title from Burlington Northern. The trial court erroneously concluded that this would cause a merger of estates. The doctrine of merger is not favored in Washington.

It was an inflexible rule at common law that a merger always took place when a greater and a lesser estate met in the ownership of the same person without any intermediate estate, but modernly the doctrine of merger is not favored either at law or in equity. Consequently, the courts will not compel a merger of estates where the party in whom the two interests are vested does not intend such a merger to take place, or where it would be inimical to the interest of the party in whom the several estates have united. . . .

Mobley v. Harkins, 14 Wn.2d 276, 281-82, 128 P.2d 289 (1942). National Bank of Commerce v. Fountain, 9 Wn. App. 727, 514 P.2d 194 (1973);

White v. Coates, 17 Wn.2d 686, 137 P.2d 113 (1943). There is no evidence to demonstrate such intention in this case and it would be clearly against the interest of Raintree. Should Raintree acquire the fee, it will possess the rights of Burlington Northern and the only duties owed to the plaintiffs by Raintree will be those imposed by the master lease. A subtenant has no greater rights against the owner than his immediate landlord. McDuffie v. Noonan, 176 Wash. 436, 439, 29 P.2d 684 (1934).

Some plaintiffs have cross-appealed claiming the trial court erred in dismissing their claims under the Interstate Land Sales Full Disclosure Act, 15 U.S.C.A. § 1701 (1974), et seq., the Washington Land Development Act of 1973, Ch. 58.19 RCW, and the Washington Consumer Protection Act, Ch. 19.86 RCW. The trial court found:

Finding of fact No. 32:

The problems involved in this case arise out of changes of circumstances and problems in the interpretation of the rights of the parties generated largely through those changes of circumstances. It appears to the court that there has been no deceptive or fraudulent practice on the part of any of the defendants.

The plaintiffs have not assigned error to this finding of fact and therefore it becomes the established fact of the case. Seattle v. Evans, 75 Wn.2d 225, 228, 450 P.2d 176 (1969). The threshold determination in each of the referenced statutes is a fraudulent or deceptive practice. The plaintiffs having failed to establish this essential fact, the trial court properly denied recovery.

The judgment, insofar as it fixes past and future rental subject to the master lease and gives credit for overpayment, is affirmed. To the extent that the judgment purports to enjoin, restrain or restrict any future development of the 640 acres, it is reversed. Dismissal of the plaintiffs' statutory claims is affirmed.

WE CONCUR

Ringold, J.

Corbett, J.

Malcolm, J.

DATE June 27 1983 NO. 6425

RECEIVED OF Berghausen Consulting

ADDRESS 6625 S. 190th Suite 0102 Kent

Fifty only

\$ 50.00

FOR Starwater Plat Vacations

HOW PAID

BALANCE DUE

#3129

—

BK826

REDFORM

BY James Hoff

**BARGHAUSEN CONSULTING
ENGINEERS, INC.**

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM DVC-3 V-4

INVOICE		DESCRIPTION	TOTAL AMOUNT	DEDUCTIONS		NET AMOUNT
DATE	NO.			DISCOUNT	FREIGHT	
		# 1050 Re: Starwater/processing application				

BARGHAUSEN CONSULTING ENGINEERS, INC.

"Land Planning, Survey, and Design Specialists"

REC'D JUN 22 1983

June 21, 1983

Mr. Tom Pickerel ,
Planning Director
Kittitas County Courthouse
Ellensburg, Washington 98926

SPECIAL DELIVERY

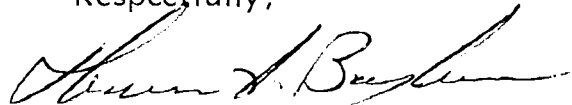
RE: Proposed Vacation of Plat of Starwater
Our Job # 1050

Dear Mr. Pickerel:

I am herewith enclosing the required \$ 50.00 fee for the processing of the above referenced application. We are looking forward to the Public Hearing, which is scheduled on Tuesday, June 28, 1983, and we hope that everything will proceed satisfactorily.

If you have any questions, or wish to discuss the project prior to the meeting, please let me know when we can get together. Thank you.

Respectfully,



Thomas A. Barghausen, P.E.
President

TAB/jds

enc: check



June 24, 1983

Tom Pickerell
County Planner
Klittitas County CourtHouse
5th and Main Rm. 108
Ellensburg, WA 98926

Dear Tom:

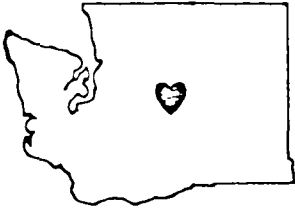
We have applied for the vacation of the starwater Plate Division I, under the name of Star Water Glenn, Inc.

I want to confirm that Pac West MKT, Inc. is basically the same companies both owned by myself. Eventually the property will be transferred to Starwater Glenn, Inc.

Thank you,

Rich M. Toohey

RMT/cs



KITTITAS COUNTY PLANNING OFFICE

Room 216 Courthouse

Ellensburg, Washington 98926

(509) 925-4631

September 16, 1983

Edward C. Mueller
17th Floor, Park Place Bldg.
Sixth & University
Seattle, Washington 98101

Dear Mr. Mueller:

The Board of Kittitas County Commissioners has set a date for October 11, 1983 at 11:15 A.M. to consider the proposed plat vacation of the Starwater Div. I subdivision. Please notify your clients Karel and Eva Hasek d/b/a Hasek Construction Company, and Jens Nielsen so that they might be aware of this hearing.

May I suggest also, that you give me a call at your earliest convenience so that I might bring you up to date on what has transpired so far on this proposal.

Very truly yours,

Tom Pickerel,
Planning Director

TP/bb

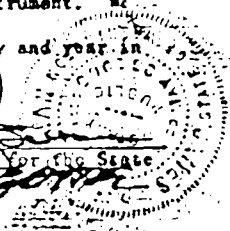
STARWATER
PLAT COVENANTS

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 1st day of November A.D., 1979, before me the undersigned a Notary Public in and for the State of Washington duly commissioned and sworn personally appeared Mr. George Samuels to me known to be the President of Section 11, Inc., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

James P. [Signature]
Notary Public in and for the State
of Washington



STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 1st day of November, 1979, before me the undersigned a Notary Public in and for the State of Washington duly commissioned and sworn personally appeared Paul M. [Signature] to me known to be the Vice President of Burlington Northern, Inc., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.



Paul M. [Signature]
Notary Public in and for the State
of Washington

Ret: 2441-152 + Ans. 7. C.
Redmond W., 98052

437639

KITTITAS COUNTY AUDITOR
FILED REQUEST OF:

PROTECTIVE COVENANTS RUNNING WITH LAND

James P. McLowen
79 NOV 13 AM 10:48

THIS INDENTURE and declaration of covenants running with the land,
made this ___ day of _____, 1979 by Burlington Northern, Inc.
and Section II, Inc.

WITNESSETH:

WHEREAS, said parties are the owners in fee of Starwater Division I an
addition to Kittitas County, Washington, as recorded in Volume 7 of Plats,
Pages 45, 46, 47, records of Kittitas County, which property is located
in Kittitas County, Washington, and

WHEREAS, it is the desire of said parties that said covenants be
recorded and that said protective be hereby impressed upon said land, now
therefore

IT IS HEREBY MADE KNOWN THAT said parties do by these presents make,
establish, confirm and hereby impress upon Starwater Division I an addition
to Kittitas County, Washington, according to plats thereof recorded in
Volume 7 of Plats, Pages 45, 46, 47, records of Kittitas County,
Washington, which property is all located in Kittitas County, Washington,
the following protective covenants to run with said land, and do hereby
bind said party and all of their future grantees, assignees and successors
to said covenants for the term hereinafter stated and as follows:

1. All improvements on any lot which are permitted under the terms of these covenants shall be erected within a circular cabin site having a radius of not more than forty feet. All owners of lots in Starwater Division I and all lessees and owners of lots in plat of Ski Tur Valley - Vikingdal Division shall have a free right of passage at all times across and through all portions of lots in Starwater Division I outside the 40-foot cabin site above described and shall not be hindered or interfered with in any respect whatsoever by artificial boundaries or barriers, and through and across all common areas. All lots not sold by the developer shall be deemed common areas for purposes of free access until sold. The above described lots shall be used for recreation or residential purposes for single family only, or for more than one family upon consent of Reintree Corporation; provided, however, that Reintree Corporation may designate sites for swimming pools, tennis courts, and other recreational structures, necessary commercial facilities or utilities and transfer said sites to others.
2. The common areas shall remain as nearly as possible in their natural state.
3. All plans for construction on any building site shall conform to county standards and the standards set forth herein. All lots shall at all times be maintained in a neat, clean and

insofar as possible natural state outside the immediate confines of actual construction on the building site.

4. No trees or shrubs shall be cut or timber removed from any lot except that which is essential to the preparation of the building site, driveway or walkway.
5. Each lot is subject to the following additional covenants:
 - a. No fences or other site dividers or other perimeter markings shall be established;
 - b. All structures must be enclosed and exteriors finished within one-year of commencement of construction;
 - c. All chimneys must be equipped with spark guards of forest service approved type;
 - d. Outdoor fireplaces on individual homesites must be placed within the 40-foot cabin site;
 - e. No camping or parking of camper trucks, house trailers or similar vehicles will be allowed on or near building sites except during actual construction of a permanent dwelling;
 - f. Guest camping will be permitted only under such rules as may be established from time to time by the homeowners' association;
 - g. Only designated group campfire areas may be used and no fire left unattended;
 - h. No hunting is permitted under any circumstance;
 - i. Use of firearms must be confined to specifically designated areas under rules approved by the homeowners' association;
 - j. Owners will control all predatory pets in order to protect wildlife;
 - k. Planting of domesticated lawn grasses, plants, shrubs or trees must be confined to the limits of dwellings in attached planters;
 - l. Reasonable transplanting of natural growth is permitted;
 - m. Slashed and downed timber may only be cut for firewood for personal use within Starwater;
 - n. Automobiles and other vehicles may be parked in designated parking areas;

- o. A ten mile an hour speed limit on private roads will apply to all vehicles, and no vehicles will be permitted which in any way create a nuisance;
 - p. No trash, garbage or refuse shall be allowed to accumulate on any lot, and all refuse containers shall be placed in secure containers;
 - q. No chainsaws or other noisy equipment may be operated before 9:00 a.m. or after 6:00 p.m., except for original construction and development.
6. Off road use of all terrain vehicles/off road vehicles (ATV/ ORV) is prohibited.
7. The foregoing covenants are covenants running with the land and are created for the benefit of all owners in Starwater Division I, and lessees in plat of Ski Tur Valley - Vikingdal Division and may be enforced by any of said persons, and by Ski Tur Valley Maintenance Company, and shall be enforced by Reintree Corporation and/or Section 11, Inc. so long as either one of said corporations owns any interest in any lots in Section 11. Reintree Corporation covenants and agrees with all parties benefited hereby that in the event it fails to enforce any of the foregoing covenants promptly upon notice of any of the parties benefited thereby that such parties or persons or Ski Tur Valley Maintenance Company may take such action as it or they deem appropriate or necessary to enforce said covenants the expense of which Reintree Corporation and/or Section 11, Inc. jointly and severally agree promptly to pay together with all costs and fees incurred in any enforcement action if the party prevails.

SECTION 11, INC.

By: *Raymond Howells, President*

BURLINGTON NORTHERN, INC.

By: *Settlemeyman*
 Vice President
 Timber & Land Department

(selected)

Protective covenants running with the land - made between Burlington Northern, Inc., and Section II, Inc. Said parties established upon Starwater Division I the following protective covenants:

- Circular cabin sites within each lot with a radius of not more than 40 feet.
- Free right of passage for all lessees and owners of lots in Ski Tur Valley through and across all portions of Starwater lots (outside 40 feet cabin site) at all times.
- Passage shall not be hindered by barriers, boundaries, etc.
- Starwater lots shall be used for recreation and single family purposes only.
- Common areas shall remain in natural state.

QUESTIONS

If land owners in the act of platting agree to restrictions as a condition of approval, is it unreasonable to seek a return to pre-plat conditions by vacating the entire package?

They are asking for a return to the status of the land before it was platted. Why is this a threat to other land owners? --Have others shown that this is unreasonable or unfair?

Or should the present owners demonstrate that vacating the plat will not adversely affect others?

What rights of free access, etc., did others have on this land before it was platted?

WHO IS 'SECTION II' ... ARE THEY STILL ORGANIZED?

What does vacation do to USPS road status -- for future development.

LEGAL NOTICE

NOTICE IS HEREBY GIVEN THAT THE BOARD OF COMMISSIONERS OF KITTITAS COUNTY, WASHINGTON, WILL CONTINUE A PUBLIC HEARING SEPTEMBER 6, 1983, AT 11:15 A.M., IN THE KITTITAS COUNTY COURTHOUSE, TO CONSIDER THE PROPOSED VACATION OF THE PLAT OF STARWATER, DIVISION I, LOCATED IN SECTION 11, TWP. 22 N., RGE. 11 E., W.M.

ANYONE WITH AN INTEREST IN THIS MATTER IS URGED TO ATTEND SAID HEARING OR TO SUBMIT WRITTEN TESTIMONY TO THE BOARD OF COMMISSIONERS PRIOR TO THE HEARING DATE.

Sent to:

*Hyman Hull
George, Hull, & Porter, P.S.
P O Box 2286
Seattle WA. 98111*

*Robert Hansen Jr.
2223 71st Ave. S.E.
Mercer Is. WA. 98040*

*Tom Barghausen
Barghausen Consulting Engrs.
6625 So. 190th. # 102
Kent, WA. 98032*

*Sheena Adbig Atty - 1104 Pacific Bldg Seattle 9810X
John Woodburne - 10512 NE 68th.
Kirkland 98033 827-5646*

REC'D AUG 15 1983

LAW OFFICES OF
MURPHY & MCGOWAN
SUITE 2100 FOURTH & BLANCHARD BLDG.
2121 FOURTH AVENUE
SEATTLE WASHINGTON 98121

(206) 622-5642
(206) 622-5722

THOMAS H. MURPHY
JAMES P. MCGOWAN
MARK S. ELGOT
RICHARD J. MOORE

August 11, 1983

Kittitas County Commissioners
Kittitas County Superior Court
Ellensburg, Washington 98926

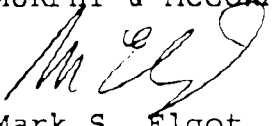
Re: Starwater Division I Plat Vacation

Dear Commissioners:

I am enclosing Sheena Aebig's acceptance of service of the notice of public hearing in the above-referenced matter supplied to me by Mr. Pickerel. Please contact me if this is not satisfactory.

Yours very truly,

MURPHY & MCGOWAN


Mark S. Elgot

MSE/sdb

Enclosure

cc: Thomas Pickerel, Planning Dept.,
Kittitas County Courthouse w/enc.

DECLARATION OF SHEENA AEBIG

SHEENA AEBIG declares as follows:

I am the attorney for John S. Woodburne, trustee in bankruptcy for Kingco Excavating Company. I am authorized to accept personal service of the notice of plat vacation hearing, a copy of which is attached hereto, and do accept service of said notice on behalf of John S. Woodburne.

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

DATED: August 11, 1983
PLACE: Seattle

Sheena R Aebig
SHEENA AEBIG

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ANYONE WITH AN INTEREST IN THIS MATTER IS URGED TO ATTEND SAID HEARING OR TO SUBMIT WRITTEN TESTIMONY TO THE BOARD OF COMMISSIONERS PRIOR TO THE HEARING DATE.

Law Offices of

CARNEY, STEPHENSON, BADLEY, SMITH & MUELLER

A PROFESSIONAL SERVICES CORPORATION

17TH FLOOR, PARK PLACE BUILDING
SIXTH & UNIVERSITY

SEATTLE, WASHINGTON 98101
(206) 622-8020

CABLE: INTERLEX

TELEX: 321270 CARSTEPH

R. JACK STEPHENSON
BASIL L. BADLEY
MILTON C. SMITH
EDWARD L. MUELLER
SANDRA D. BATES
NICHOLAS P. SCARPELLI, JR.
JOHN M. MONAHAN
RICHARD J. PADDEN
TIMOTHY J. PARKER
WILLIAM T. ROBINSON

JAMES K. DOANE
CHARLES N. EVANS
T. JEFFREY KEANE
A. RICHARD MALONEY
JAMES W. MINORCHIO
LAURA M. MURPHY
FREDERICK M. ROBINSON
PALMER ROBINSON
G. WILLIAM SHAW
STEPHEN C. SIEBERSON
JOEL S. SUMMER
CLIFFORD A. WEBSTER

of counsel

ELVIN P. CARNEY
WILLIAM C. HALLIN

September 6, 1983

RECEIVED
SEP 6 1983

1st _____ 2nd 3rd
CLERK OF KITTITAS COUNTY COMMISSIONERS

Board of County Commissioners
Kittitas County
Kittitas County Courthouse
Ellensburg, Washington 98926

Re: Application for Vacation of Plat of Star Water
Division #1

Attention: Richard Hocht, County Commissioner

Gentlemen:

This letter is a follow-up to my telephone conversation on Friday, September 2, 1983, with the Honorable Richard Hocht, County Commissioner of Kittitas County. He was responding to my telephone request for information concerning the application for vacation of the above referenced plat.

Our law firm, and I, Edward L. Mueller, represent Karel and Eva Hasek, d/b/a Hasek Construction Construction Company, who built the three cabins, located on, respectively, lots 7, 8, and 9, of the Star Water Division No. 1, as recorded in Volume 7 of plats, of pages 45, 46 and 47, records of Kittitas County, Washington. We also represent Jens Nielsen, who has purchased an interest in Lot 9.

Let me explain the history of their respective interests.

In April, 1980, Hasek Construction Construction Company filed construction liens against each of the three respective lots and premises, because of failure of the developer, Reintree Corporation, and Star Water, Inc., to pay for the work done on those premises. Mr. James McGowan, of the law firm of Murphy and McGowan represented the developers. Unknown to Hasek Construction Company, other construction, engineering and excavation firms had also filed liens, and commenced foreclosure. Four of those firms, contrary to normally accepted practice, failed to include Hasek Construction Company and a number of other lien creditors in the foreclosure lawsuit. That lawsuit was completed without ever

County Commissioners
September 6, 1983
Page 6

On behalf of Mr. Jens Nielsen, Mr. & Mr. Hasek, d/b/a Hasek Construction Company, and my law firm, I wish to thank you for the courteous attention given to my inquiry by the Honorable Richard Hocht, County Commissioner.

Very truly yours,

CARNEY, STEPHENSON, BADLEY,
SMITH & MUELLER


Edward L. Mueller

ELM:lss

cc: Jens Nielsen
Hasek Construction Company

LEGAL NOTICE

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ANYONE WITH AN INTEREST IN THIS MATTER IS URGED TO ATTEND SAID HEARING OR TO SUBMIT WRITTEN TESTIMONY TO THE BOARD OF COMMISSIONERS PRIOR TO THE HEARING DATE.

STATE OF WASHINGTON)

County of King)

I, KENNETH S. HELM, Clerk of the Superior Court of the State of Washington, for the County of King, do hereby certify that I have compared the foregoing copy with the original instrument as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof, I further certify that these letters are still in full force and effect and have never been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Superior Court at my office at Seattle this _____

day of _____ 19_____

JUL 1 1983

KENNETH S. HELM, Superior Court Clerk

By M. M. Kaulopaul
Deputy Clerk

Ret:PUTI

463000

7-10

STILLERSON & COMPANY
PLANNERS

PLANNERS
\$35.40
\$100.00
\$100.00
\$100.00



THE GRANTOR John M. Giardone and Stella A. Giardone, husband and wife, who have been married and wife since well prior to March 3, 1932, and Donald R. Strong and Mary Ann Strong, husband and wife, who have been married and wife since well prior to March 3, 1932, (the heirs John M. Giardone and Donald R. Strong being the same individuals who under the style of John Giardone and Don Strong, conducted a partnership with the business of Giardone and Strong and which partnership is now dissolved) for and in consideration of TEN DOLLARS (\$10.00) and other considerations in hand paid, convey and warrant to Sam H. Hanks, Jr. and Phyllis Hanks, husband and wife, the following described real estate, located in the County of Kittitas, State of Washington:

That portion of Section 11, Township 37 North, Range 14 East, S.W. 1/4, Kittitas County, State of Washington, described as follows:

Beginning at the southeast corner of said Section 11,

Thence north 89° 54' 30" west along the south line of said Section 11 a distance of 692.88 feet to intersect the east right of way line of Gold Creek Road No. 2300, end point of intersection being a point on the tangent and the true point of beginning;

Thence northerly along said right of way the following courses and distances:

- North 19° 55' 54" east, 170.47 feet;
- Thence along a curve to the right 212.30 feet on a radius of 1115.02 feet;
- Thence north 31° 54' 10" east, 170.81 feet;
- Thence along a curve to the left 322.45 feet on a radius of 668.73 feet;
- Thence north 23° 50' 23" west, 49.55 feet;
- Thence along a curve to the right 53.85 feet on a radius of 150.25 feet;
- Thence north 3° 46' 00" west, 79.55 feet;
- Thence along a curve to the left 188.00 feet on a radius of 173.24 feet;
- Thence north 68° 10' 33" west, 23.59 feet;
- Thence along a curve to the left 12.97 feet on a radius of 316.45 feet;
- Thence north 28° 37' 44" west, 78.37 feet;
- Thence along a curve to the right 187.34 feet on a radius of 158.99 feet;
- Thence north 30° 37' 58" west, 44.90 feet;
- Thence along a curve to the right 46.24 feet on a radius of 56.49 feet;
- Thence north 50° 10' 47" west, 60.00 feet to the west right of way line of said road.

Thence leaving the said right of way line and following a portion of the southern boundary of Ski Fur Valley - Virgilal Division Plat, north 70° 17' 53" west, 77.51 feet;

Thence south 74° 40' 00" west, 199.22 feet;

Thence north 52° 12' 00" west, 349.00 feet to the thread of Gold Creek;

Thence leaving the said southern boundary of Ski Fur Valley - Virgilal Division Plat and following along the thread of Gold Creek South 54° 00' 13" west, 210.00 feet;

- Thence south 42° 00' 00" west, 340.00 feet;
- Thence south 21° 00' 00" west, 350.00 feet;
- Thence south 7° 00' 00" west, 200.00 feet;
- Thence south 37° 00' 00" west, 100.00 feet;
- Thence south 66° 00' 00" west, 340.00 feet;
- Thence south 69° 46' 00" west, 238.00 feet;
- Thence south 40° 00' 00" west, 84.35 feet to the intersection of the thread of Gold Creek with the west line of the southwest 1/4 of said Section 11.

OFFICIAL RECORDS

5-25-32

170-176

Exhibit

D

Thence along said west line to the southeast corner of said Section 12, south $24^{\circ}47'$ west, 454.99 feet;
Thence along the south line of said southeast 1/4 south $22^{\circ}54'30''$ east, 1044.04 feet to the true point of beginning;
EXCEPT 2-4 portions, thereof, lying within the plat of Starwater, Division 1, as per plat thereof, recorded L. Volume 7 of Plans, Pages 49, 48 and 47, records of Kittitas County, State of Washington.

Together with an easement for rights of way as granted by instrument recorded May 29, 1969 under Auditor's File No. 442129 and described as follows:

The Grantor does also assign to Grantee the right and privilege to use, together with the Grantor, the following road rights of way acquired or reserved in easements between Grantor and the United States of America:

Easement granted Northern Pacific Railway Company by the United States of America, dated July 13, 1967, recorded in Kittitas County August 29, 1977 in Volume 108, Page 48, for the Gold Creek Road No. 22819 and Rampart Ridge Road No. 2279 in Section 14, Township 22 North, Range 11 East, W.M.

Easement granted Grantor by the United States of America, dated January 18, 1977, and recorded March 23, 1977, in Volume 81, Page 623, records of Kittitas County for the Kanchikus Freeway Road No. 22821 across Sections 14 and 15, Township 22 North, Range 11 East, W.M.

Easement granted the United States of America by Grantor, dated October 12, 1978, for the Gold Creek Road No. 22819.

And together with an easement for water intake facilities and underground water pipelines over and across the following described land:

That portion of the South 1/2 of Section 12, Township 22 North, Range 11 East, W.M. in the County of Kittitas, State of Washington, described as follows:
Commencing at the South east quarter corner of said Section 12; thence north $66^{\circ}56'30''$ west along the section line between Section 12 and Section 14, Township 22 North, Range 11 East, W.M., a distance of 784.8 feet to intersect the centerline of Gold Creek Road No. 22819, said point of intersection being a point on a tangent of the centerline of an unnamed road in the plat of Eld Fur Valley-Vikingdal Division, which lies within the above mentioned Section 12; thence northerly along said road centerline the following courses and distances:

- North $12^{\circ}55'18''$ east a distance of 259.95 feet;
- Thence north $21^{\circ}21'18''$ east a distance of 296.57 feet to a point of curvature of said unnamed road, said point being also the true point of beginning;
- Commencing at said true point of beginning a strip of land 100 feet wide being 20.00 feet in width on each side as measured perpendicular to the following described centerline:
- Thence north $72^{\circ}43'07''$ east a distance of 195.08 feet to the point of a curvature of a curve to the left, said curve having a tangent distance of 18.00 feet and a deflection angle to the left of $24^{\circ}43'18''$;
- Thence along said curve to the point of tangency of said curve;
- Thence north $47^{\circ}55'49''$ east a distance of 78.46 feet to the point of curvature of a curve to the left, said curve having a tangent distance of 18.00 feet and a deflection angle to the left of $2^{\circ}40'04''$;
- Thence along said curve to the point of tangency of said curve;
- Thence north $39^{\circ}18'45''$ east a distance of 78.20 feet to the point of curvature of a curve to the right, said curve having a tangent distance of 18.00 feet and a deflection angle to the right of $3^{\circ}14'07''$;
- Thence along said curve to the point of tangency of said curve;
- Thence north $47^{\circ}33'31''$ east a distance of 72.39 feet to the point of curvature of a curve to the right, said curve having a tangent distance of 18.00 feet and a deflection angle to the right of $7^{\circ}15'43''$;
- Thence along said curve to the point of tangency of said curve;
- Thence north $55^{\circ}12'07''$ east a distance of 214.11 feet to the point of curvature of a curve to the left, said curve having a tangent distance of 18.00 feet and a deflection angle to the left of $4^{\circ}49'04''$;
- Thence along said curve to the point of tangency of said curve;
- Thence north $45^{\circ}10'22''$ east a distance of 84.48 feet to the point of a curvature of a curve to the right, said curve having a tangent distance of 18.00 feet and a deflection angle to the right of $1^{\circ}21'18''$;
- Thence along said curve to the point of tangency of said curve;
- Thence north $45^{\circ}10'22''$ east a distance of 84.48 feet to the point of a curvature of a curve to the right, said curve having a tangent distance of 18.00 feet and a deflection angle to the right of $1^{\circ}21'18''$;

111-177

a deflection angle to the left of 23°29'44";
 Thence along said curve to the point of tangency of said curve;
 Thence north 88°15'47" east a distance of 192.72 feet to the point of curvature
 of a curve to the left, said curve having a tangent distance of 12.00 feet and
 a deflection angle to the left of 1°15'23";
 Thence along said curve to the point of tangency of said curve. Said point
 of tangency being the end of the 199.00 foot wide strip of land and the
 beginning of a strip of land 199.00 feet in width being 199.00 feet on each
 side as measured perpendicular to the following described centerline;
 Thence north 28°08'47" east a distance of 192.14 feet to the point of curvature
 of a curve to the right, said curve having a tangent distance of 10.00 feet
 and a deflection angle to the right of 83°59'14";
 Thence along said curve to the point of tangency of said curve;
 Thence south 65°53'59" east a distance of 400 feet to a point on the centerline.
 Said point being the end of the 208.00 foot wide strip of land and the beginning
 of a strip of land 158.00 feet in width, being 100.00 feet wide on the northerly
 side and 58.00 feet wide on the southerly side as measured perpendicular to
 the following described centerline;
 Thence south 06°34'50" east a distance of 125 feet to a point on the centerline.
 Said point being the end of the 158.00 foot wide strip of land and the end of
 this description.

EXCEPT: That portion of the hereinafore described parcel of land that lies
 within the 66.00 foot right of way of the unnamed road in the plat of Ski-Tur
 Valley-Village-Plat Deeded.

SUBJECT TO an easement affecting a portion of said premises and other lands
 being known as Gold Creek Road No. 13022 for access road in favor of the
 United States of America recorded May 24, 1947, under Auditor's No. 338742;
 terms and conditions of that certain decree entered August 7, 1979, in King
 County Superior Court Cause No. 821764, a certified copy of which was recorded
 in Kittitas County, Washington, on September 7, 1979, under Auditor's File No.
 435924; nor provisions as contained in the dedication of the plat Ski-Tur Valley-
 Village Division wherein the dedicator instead of dedication of roads granted
 forever unto all owners of lots in the plat and all future plats in Section 11,
 Township 23 North, Range 3 East, W.M. an undivided interest in all roads shown
 as private roads, said matter affecting that portion of said premises lying within
 the unnamed road of said plat of Ski-Tur Valley. Said road is also known as
 Gold Creek Road and is also known as Starwater Drive is shown on the face of
 the plat of Starwater, Division No. 1; easement for a water system extending
 five feet beyond all improvements shown or installed, outside the boundaries of
 Ski-Tur Village, Division, according to the plat thereof recorded in Volume 4 of
 Plats, Pages 60, 61 and 62, together with rights of free access to said site
 granted to the Ski-Tur Valley Maintenance Company by instrument recorded
 December 28, 1973, under Auditor's File No. 358968; reservations contained in
 deed executed by Burlington Northern Inc., a Delaware Corporation, recorded
 May 22, 1969, as Auditor's No. 441129 as follows:

Excepting and reserving unto the seller, its successors and assigns, forever, all
 minerals of every nature whatsoever, including but not limited to uranium,
 coal, iron, natural gas and oil in, upon or under said land, and including all
 steam and waters and the minerals and gases therein, together with the right
 to the use of such part of the surface as may be necessary or convenient for
 the purpose of exploring for (by geological, geophysical or other methods) and
 drilling for, producing, mining, (by any method including but not limited to
 surface mining) extracting, taking, storing, transporting the same and for
 constructing and operating an electric generating plant or other facility for
 utilization of geothermal waters and steam found in or under said lands;
 together with the right to the use of such subsurface strata as may be necessary
 or convenient for the purpose of underground storage or injection of oil, gas
 or other hydrocarbons, water, or other substances therein, whether produced
 from the land or elsewhere. Purchaser shall have the right to use such water,
 except geothermal waters and steam, found in or upon or produced from said
 premises as is necessary or convenient for its operations. The seller, its
 successors or assigns shall be obligated to reasonably compensate the purchaser
 or its successors or assigns only for the actual physical damage to growing crops,
 trees, buildings, fences or other structures upon said land sustained as a
 result of the operations of either its successors or assigns.

21-12-12

the following unrecorded matters disclosed by Warranty Deed recorded May 29, 1962, under Auditor's No. 44289 as follows:

Grantor's Deed March 5, 1972, issued to Rainier Corporation by the State of Washington, Department of Ecology under Permit No. G4-28786P, Gold Creek Road right of way construction and use agreement between the United States of America and Northern Pacific Railway Company, dated April 24, 1944, and amended dated October 12, 1974, to the United States of America, and Permit dated March 5, 1974, issued to Rainier Corporation by the State of Washington, Department of Ecology under Permit No. G4-28786P.

any easements that may arise due to shifting or change in the course of Gold Creek; or due to said creek having changed its course; an easement affecting portion of said premises and for the purpose of the right to cross over or under said facilities and pipelines at any point for the purpose of constructing, operating and maintaining electric transmission lines, communication lines, pipelines, conduits, railroads and roadways, or for other purposes incidental to ownership of adjacent lands; except, for permanent structures that would unreasonably interfere with the use and/or maintenance of said facilities and pipelines and incidental purposes.

in favor of Burlington Northern, Inc., a Delaware corporation, recorded May 29, 1962, under Auditor's No. 44213, which easement affects the property described in the granted easement herein concerning water intake facilities and underground water pipelines.

AND ALSO SUBJECT TO all delinquent annual real estate taxes, interest and penalties including the 1962 annual real estate tax. It is known some of the delinquent taxes are prior to a segregation of this property and include taxes on this and other property.

Grantee acknowledges that he has been informed that the real estate herein described is not verified by any public water or sewer; and Grantor makes no warranty or representation, express or implied, concerning the availability of public water or sewer or septic tanks, or the soil suitability for septic tanks or the degree of percolation, and this conveyance is subject to these possible problems.

Grantor makes no warranty, express or implied, regarding zoning or the suitability of the real estate being conveyed for any particular purpose or use, the grantee relying entirely on his own knowledge and investigation; and this conveyance is subject to this absence of any such warranty.

Grantee knows there are access problems regarding the real estate being conveyed, and except for the easement access easements herein previously described (which are deliberately and specially insured in the owner's policy of title insurance being provided to Grantee), Grantee is accepting this conveyance subject to any problems of access. Grantee personally makes no warranty or representation regarding any access easement.

DATED this 16th day of August, 1963.

GRANTORS

Roy E. Anderson
Roy E. Anderson

Charles A. Anderson
Charles A. Anderson

Donald H. Strong
Donald H. Strong

Mary Ann Strong
Mary Ann Strong

GRANTEES

Bill Hanson
Bill Hanson, Jr.

Patricia Hanson
Patricia Hanson

+

ORIGINAL RECORD

10-12



STATE OF WASHINGTON
County of King

On this day personally appeared before me Donald E. Strong and Mary Ann Strong, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the purposes therein mentioned.

Given under my hand and official seal this 17th day of August, 1962.

[Signature]
Notary Public in and for the State
of Washington, residing at Seattle.

STATE OF WASHINGTON
County of King

On this day personally appeared before me Donald E. Strong and Mary Ann Strong, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the purposes therein mentioned.

Given under my hand and official seal this 17th day of August, 1962.

[Signature]
Notary Public in and for the State
of Washington, residing at Seattle.



STATE OF WASHINGTON
County of King

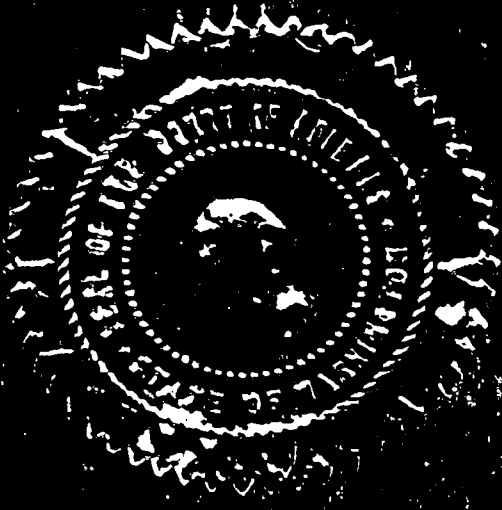
On this day personally appeared before me Bob H. Hansen, Jr. and Patricia husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 17th day of August, 1962.

[Signature]
Notary Public in and for the State
of Washington, residing at Seattle.



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



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JOHN D. REAGH, II
RICHARD A. PITT
HOWARD I. HALL
ROBERT R. OTTO
NANCY L. HOLZWANGER
KENNETH L. TAYLOR

October 25, 1983

Ms. Elizabeth H. McCune
Mr. Roy Lumaco
Mr. Rich Hoctor
Kittitas County Commissioners
Kittitas County Superior Court
Ellensburg, Washington 98926

Re: Proposed Vacation of Plat of Starwater
Division I

Dear Commissioners:

It was not until I returned to my office this afternoon that I had an opportunity to review Mr. Mueller's letter to you of October 24, 1983, concerning the termination of certain protective covenants covering Starwater Division I. I now find that these protective covenants are an entirely separate set of covenants from the ones to which I have been addressing my comments in all prior correspondence and appearances before the Commissioners. In fact, until now, I was not aware that there were two separate sets of covenants.

It is the purpose of this letter to advise you that there are two separate sets of covenants. The ones addressed in Mr. Mueller's letter were recorded December 14, 1979 in Vol. 124, page 530-535, Recording No. 438337. The covenants to which I have addressed my comments were recorded November 13, 1979 in Vol. 123, page 432-435, Recording No. 437639. To my knowledge, no unilateral termination of those covenants has ever been made or attempted.

By this letter I do not intend to be critical in any manner whatsoever of Mr. Mueller's letter of October 24, 1983; I merely wish to point out the fact that there are two sets of covenants and that they are different so as to avoid any future confusion.

Ms. Elizabeth H. McCune
Mr. Roy Lumaco
Mr. Rich Hoctor
October 25, 1983

Page Two

Thank you for your consideration.

Very truly yours,

GEORGE, HULL & PORTER, P.S.

By
Lyman W. Hull

LWH:psd

cc: Mr. Tom Pickerel
Mark S. Elgot, Esq.
Edward L. Mueller, Esq.
Mr. Gordon M. Gray

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October 21, 1983

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Approved
ELVIN P. CARNEY
WILLIAM C. HALLIN

RECEIVED
OCT 24 1983
1st _____ 2nd _____ 3rd _____
BOARD OF KITTITAS COUNTY COMMISSIONERS

Board of County Commissioners
Kittitas County
Kittitas County Courthouse
Ellensburg, WA 98926

Re: Comments on Application for Vacation of Plat
of Starwater Division No. 1.

Attention: Elizabeth H. McCune, Roy A. Lumaco, and
Richard Hocter

Dear Commissioners:

Our prior letters of September 6, 1983, and October 11, 1983, should be considered as comments which are still partially applicable. The final judgment in Kittitas County Superior Court, Cause No. 22367, has not yet been entered. Our comments in our letter dated October 11, 1983, are referred to later in this letter.

The purpose of this letter is to:

1. Report on the result of attempted negotiations with Mark Elgot, representing Richard Toohey and Pacific West Marketing, Inc., applicants for the vacation of the plat; and

2. A summary of the position of Karel and Eva Hasek d/b/a Hasek Construction Company, and Jens Nielsen, with respect to the pending Application for Vacation of Plat of Starwater Division No. 1.

I. Report on Negotiations with Toohey/Pacific West Marketing, Inc.

Negotiations with Mark Elgot, representing Richard M. Toohey, and Pacific West Marketing, Inc., have produced no agreement.

Unfortunately, the position of the respective parties during the negotiation was complicated by the fact that actual title to Lots 7 and 8 was in a substantially different posture and form than that represented to the

County Commissioners by Richard M. Toohey and Pacific West Marketing, Inc. The applicant presumes that it will, sooner or later, become fee title owners to Lots 7 and 8. Whether that occurs remains to be seen as a part of the process of the continuing steps in the pending litigation referred to in our earlier letters dated September 6, 1983 and October 11, 1983.

The negotiations with Mark Elgot covered the questions of retention of the utility system easements, and all roadways in the plat, and all pedestrian rights of crossing the premises.

In addition, in negotiations with Elgot, we objected to the proposed density of the new development and location of the proposed buildings. For example, whereas the original plat of Starwater Division No. 1 called for considerable maintenance of natural trees and plants, except within the specific location of the forty foot diameter circle on which a cabin could be built, the proposed replat will clear large areas for parking, and place large six-plex buildings within twenty-five feet or so of the existing cabins.

When we inquired about the reputed plan for a lesser density, down to 120 units--as compared to 168 units originally proposed, Mr. Elgot informed us that there were no plans available at this time; that was simply a discussion of a possible reduction in density.

When we suggested that an appropriate reduction in density would be down to approximately the same number of units for which the utilities were originally built; or at most, no more than double the density of development, Mr. Elgot rejected the proposal outright without prior discussion with his client. He also rejected the proposal that all roads be left in their existing location, and that all utility easements and utility lines be left.

It was clear from the discussions with Mark Elgot that he felt that his client held the power hand, and need give no concessions other than those they might "choose to give" based on the "appropriate" interest of the possible owners of the lots, and the other persons who have appeared and commented, such as the Vikingdal residents and Robert Hanson.

Unfortunately, the real purpose behind this application to vacate probably has not been fully disclosed. We have learned that there is a pending sale agreement to a "limited partnership" which has not yet been formed. The reputed price of the sale of the plat varies, depending upon the

source of the information, from \$300,000 to \$385,000.

It is clear that agreements with Richard M. Toohey/Pacific West Marketing, Inc., would be meaningless, unless they were impressed on the land as covenants running with the land. The current applicant intends to sell--not redevelop.

The new developer would be an entirely different entity, and any agreements made with Toohey/Pacific West Marketing, Inc., would be meaningless under the circumstances, unless they became covenants running with the land.

Therefore, we caution the County Commissioners of Kittitas County that any representations or "agreements" to provide certain amenities or assurances to other parties once the plat is "vacated" will be meaningless, unless the conditions are imposed as a "replat" or an "amendment" to the plat as distinguished from a "vacation" of the plat.

It is sufficient to say that it is our view that no amount of negotiation will solve the problems between Richard M. Toohey/Pacific West Marketing, and the Haseks and Nielsen until the pending litigation is completed; and an additional lawsuit to reimpress the covenants on the plat have been brought and decided.

II. Summary of Position of Haseks and Nielsen Re:
Vacation of Plat of Starwater Division No. 1.

It is the position of the Haseks and Nielsen that the applicant does not have the necessary ownership interest to vacate the plat. RCW 58.12.010 requires that the petition be made by three-fourths (3/4) in number and area of the owners who file the petition. It is obvious that Toohey/Pacific West Marketing represents only one-third (1/3) of the number of owners of the property and the plat. The Haseks are the second owners and Nielsen is the third owner.

Furthermore, the various covenants, restrictions, and easements in a plat become an inherent right of the owner of each lot in the plat, to the extent that each lot is benefitted in any way by such covenants, easements, restrictions, and service by utilities, as well as roadways and accessways. That even includes the pedestrian rights to cross all of the other lots. Since the applicant does not seek to vacate Lots 7, 8 and 9, he has no right to vacate any of the easements, restrictions, service by utilities, or roadways, to the extent any of those have been prepared and filed and recorded for the benefit of all lot owners. Those became vested rights which cannot be taken away even if the rest of

the plat were modified, unless there is a consent by the owners of Lots 7, 8 and 9.

The County Commissioners, may, pursuant to RCW 58.12.040, proceed to a hearing, provided a proper application has been filed. It is the position of the Haseks and Nielsen that a proper application has not been filed.

Assuming for purposes of further discussion, that a proper application has been filed, then if the County Commissioners proceed to a hearing, pursuant to RCW 58.12.040, then it appears, according to the limited case law available under the statute, that the County Commissioners have authority to approve and adopt, or disapprove and reject, only the identical application for vacation of plat which has been presented. County Commissioners apparently have no authority to first set their own conditions and modify the proposed vacation (or replat) and then adopt it as modified. See Brazell v. Seattle, 55 Wash. 180, 104 Pac. 155 (1909).

I wish the law were otherwise; because I believe the County Commissioners would attempt to do what they felt was in the best interest of all parties. Unfortunately, it appears your hands are tied by an overly aggressive developer who would like to increase the value of the plat by "vacating" the plat and replatting it for a density of use approximately three and one-half to four times its original proposed density.

Please understand, RCW 58.12.040, gives the County Commissioners the authority to, among other things, assess damages or benefits, for the purpose that those persons who had not petitioned would be made whole, so that their property cannot be taken or damaged without compensation-- that is the Haseks and Nielsen should receive compensation from someone for the damages which will be caused to them by the vacation of the plat. While you, as County Commissioners, may be very knowledgeable persons, it does not seem likely that you have the knowledge, background, or expertise to decide damage questions, at least not at the hearing on October 25, 1983.

Furthermore, the record fee owner of Lots 7 and 8 has never received notice of this hearing. The record fee owner of Lots 7 and 8 is neither Richard M. Toohey nor Pacific West Marketing. The first lawsuit, Kittitas County Cause No. 22056, did not foreclose against the fee title owner of Lots 7 and 8. Therefore, it seems likely that Richard Toohey/Pacific West Marketing, Inc., holds a defective title on Lots 7 and 8 at this time. Furthermore, that title is subject to defeasance

by foreclosure on the action in which judgment will be entered shortly.

In summary, the legal ramifications created by the Application for Vacation of Plat of Starwater Division No. 1, are sufficiently questionable on a legal basis that you, as Kittitas County Commissioners, should deny the application for vacation on those legal grounds, alone.

Turning briefly to the merits of the arguments of the applicant for vacation. The applicant claims that the present plat is not economically feasible. The applicant has offered no factual information to support that claim. Considering the fact that the applicant has had the advantage of bargain price purchase of the prior subdivision in which substantial improvements have already been installed, such an argument should not be accepted just because it has been asserted.

The Haseks and Nielsen, combined, have an interest in the three lots, Lots 7, 8, and 9, which exceed \$100,000. The actual value of those three lots, combined, is probably substantially above that. We understand that the lots are currently on the County assessment rolls for a combined value in substantially in excess of \$200,000.

On the other hand, depending on whom one believes, Richard M. Toohey/Pacific West Marketing, is reputed to have paid between \$70,000 (redemption value) and \$150,000 (source-- Toohey's representative) for the rest of the plat. Toohey/Pacific West Marketing owns 49 lots. That calculates out to between approximately \$1,500 and \$3,000 per lot. The cost of the improvements on the plat, alone, not to mention the value of the land itself, probably does justify his asking price of between \$300,000-\$385,000. That probably makes each lot, in its present condition, worth approximately \$6,000 to \$7,200.

In summary, there is no economic hardship on Richard M. Toohey/Pacific West Marketing, Inc.

No doubt the property would be worth several times more if it could be developed in an intensive manner into a collection of multiplexes with time-share arrangements. Under the proper circumstances, with proper planning and presentation by the developer who intends to do the development might warrant some serious consideration by the Kittitas County Commissioners provided that all of the other concerns for protecting the area, and providing utilities and protection of the environment were properly observed.

All of the reasons and discussions provided in our

Board of County Commissioners
October 21, 1983
Page 6

letter dated October 11, 1983, should have been considered by the applicant. The existing improvements for the community water system and the sanitary sewer system almost certainly do not have the capacity to serve the proposed new development.

The roadways, utility easements, pedestrian easements, and covenants should be preserved.

The applicant asks the County Commissioners to do away with the covenants, restrictions, easements and provision for utilities and protection of the environment which were inherent in the original Plat of Starwater Division 1. But that would destroy the value of Lots 7, 8, and 9.

The Haseks and Nielsen simply ask that no vacation of the plat occur that removes any of the rights or protections of the existing lot owners. That includes preservation of each and every covenant, restriction, easement and right to utility service.

It is respectfully submitted that there is no justification for the vacation of the plat at this time. We specifically request that the County Commissioners deny the application for the vacation of the plat in its entirety.

Under appropriate circumstances, and with proper details worked out with the appropriate interested parties, the applicant should be free to come back to the Board of County Commissioners with a new proposal which provides the proper protections for the various interested parties. If Richard M. Toohey/Pacific West Marketing, Inc, is not willing to do that, then perhaps he should sell his property to someone who is willing to do a development more consistent with the existing development in the area, and the original proposed plat.

Very truly yours,

CARNEY, STEPHENSON, BADLEY
SMITH & MUELLER



Edward L. Mueller
Attorneys for Karel and Eva
Hasek, and Jens Nielsen

ELM:tak

Law Offices of

CARNEY, STEPHENSON, BADLEY, SMITH & MUELLER

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of counsel
ELVIN P. CARNEY
WILLIAM C. HALLIN

October 11, 1983

Board of County Commissioners
Kittitas County
Kittitas County Courthouse
Ellensburg, Washington 98926

Re: 1. Comments of Application for Vacation of Plat of
Starwater Division No. 1;
2. Conditions Requested.

Attention: Richard Hochtort, County Commissioner

Dear Commissioners:

Our letter of September 6, 1983, introduced to you the interest of Karel and Eva Hasek d/b/a Hasek Construction Company and Jens Nielsen, with respect to Lots 7, 8, and 9 of Starwater Division No. 1, as recorded in Volume 7 of Plats, pages 45, 46, and 47, Records of Kittitas County.

The purpose of this letter is to:

1. Report the current status and further possible proceedings in the lawsuit, Kittitas County Cause No. 22367; and
2. State the position of the Haseks and Jens Nielsen with respect to the pending application of Pacific West Marketing, Inc., and its affiliates to vacate the Plat of Starwater Division No. 1, except for Lots 7, 8, and 9.

1. Status and Further Proceedings in Kittitas County Cause No. 22367.

Hasek v. Terrene Excavators, et al., and Pacific West Marketing, Intervenor, Kittitas County Superior Court Cause No. 22367 came to trial on October 4, 1982; and the Honorable William R. Cole, Judge of the Superior Court of Kittitas County has rendered his oral decision on October 5, 1983, that plaintiffs Hasek are entitled to foreclose their liens with respect to all three Lots, 7, 8, and 9, of Starwater Division No. 1. Included in that decision is the implicit right to foreclose against the interest of

Pacific West Marketing, Inc., in Lots 7 and 8; as well as the interest of Kingco Excavating, Inc. in Lot 9. Also included in the decision is the determination that the Haseks have "priority" over all other claimants in that action.

As you probably know, the completion of the paperwork of a trial involving more than twenty parties plus an intervenor, Pacific West Marketing, Inc., takes time to prepare serve the Proposed Findings of Fact, Conclusions of Law, and Judgment on other parties, and provide for a hearing and date for entry. We do not expect the Findings of Fact, Conclusions of Law, and Judgment to be entered prior to October 20, 1983. It is our intent to try to have them entered prior to October 30, 1983, if the schedule of the court and opposing counsel permits.

Thereafter, the intervenor, Pacific West Marketing, Inc., has the right to appeal which expires thirty days after entry of final judgment. It also may have the right to redeem from the sheriff's sale Lots 7 and 8, but not Lot 9. The Haseks and/or Jens Neilsen will continue to hold Lot 9 free of any right of Pacific West Marketing, Inc., to redeem.

After entry of judgment, the Haseks will proceed to execute on their judgment by sheriff's sale unless the intervenor, Pacific West Marketing, Inc., appeals and supersedes the Judgment or purchases the entire interest of the Haseks and Jens Neilsen. An appeal may delay the sale of Lots 7 and 8, but not Lot 9.

The time scheduled for entry of final judgment and sheriff's sale is also subject to giving notice to some rights of persons and entities which may hold terminable interests in Lots 7, 8 and 9; but the likelihood of any serious activity by such potential parties is small.

2. Comments on Application for Vacation of Plat of Starwater Division No. 1.

On behalf of the Haseks and Jens Neilsen, I reviewed the subject to the application for Vacation of the Plat of Starwater Division No. 1 with Mr. Tom Pickerel, Planning Director of Kittitas County. Mr. Pickerel was able to answer a number of basic questions about the status of the application, and the kinds of concerns expressed by other persons who own property in the vicinity of the plat.

We understand that those include Vikingdal, represented by Lyman Hull of the law firm of George, Hull & Porter, Seattle; and Robert Hanson, represented by Matthew B. Straight, Attorney, Bellevue, Washington. I have spoken with Matthew B. Straight and Lyman Hull.

The Haseks and Jens Neilsen have some very serious concerns which we will list and briefly discuss.

The value of Lots 7, 8 and 9, Starwater Division No. 1 are based in large part on two basic facts:

1. The covenants, conditions, restrictions, and easements contained in both the Plat and the Declaration of Restrictions, Easements and Assessments recorded in Kittitas County Auditor's No's 437638 and 437639, provide generally for protection of value of the property of individual owners by providing for access, open space, limited density of development, retention of natural conditions, protection of local flora and fauna, snow removal, road and utility services, and maintenance of roads and utility services to the extent such roads and utility services are owned in common by the lot owners, as distinguished from being owned and maintained by Kittitas County, or some public utility district.

2. The improvements made in and to the plat generally include include roads, community water system, community sewer system, and the surveying of the plat, complete with monuments. The physical improvements made with respect to Lots 7, 8, and 9 include the three cabins, which are substantially completed.

As you would expect, a vacation of the plat, and any termination of the covenants, conditions, restrictions and easements provided for in the document filings referred to in item 1, above, would almost certainly destroy the usability and value of Lots 7, 8, and 9, even though the access roads directly to the properties were maintained, and even though the lot lines of Lots 7, 8 and 9 were maintained as a kind of residuum from the plat.

The value of Lots 7, 8 and 9 are largely dependent on the whole scheme of the original plat of Starwater Division No. 1 for their value. At the present time the cabins are not inhabitable because they have not been connected to a sanitary sewer system. Whether they have been connected to the community water system is not entirely clear. Lot 7 may have been connected because it had a temporary septic tank permit, and could be used for an office. Lots 8 and 9 may have been connected, but that is not likely because of lack of waste water disposal arrangements.

In addition, the last information available to the Haseks was that electrical power was supplied by a diesel powered generator located in the basement of the cabin on Lot 8, which supplied electrical power to Lots 7, 8, and 9, for construction purposes; and for purposes of providing sales office power at a time when the original sales program for time share units in the original plat was in progress.

If Pacific West Marketing were permitted to vacate all of the roads in the plat, and all other covenants, conditions, restrictions and easements which went with the original plat, it could seriously undermine the value of the cabins and Lots 7, 8, and 9, of Starwater Division No. 1. The owners of those three lots have vested rights in all of the covenants, conditions, restrictions and easements which were filed of record as a part of the conditions of the original plat.

As a minimum, the Haseks and Jens Neilsen are concerned about the following subjects:

1. The roads in the plat are part of the access system to permit public thoroughfare through the plat, both for owners of lots in the plat, and for visitors, guests, and other persons who have a right of passage into and across the plat. None of those roads should be vacated.

2. The community water system supply pipes and water mains were installed underground in the road right of ways in the plat, according to drawings we have seen in the Kittitas County Health Department. We have been informed by the Kittitas County Health Department that the water system appears to have been installed and is connected to the water supply source located on Burlington northern property. It is our understanding from discussions with Matthew B. Straight that the actual water supply may be under the control of Mr. Robert Hanson. It is also our understanding that there probably is sufficient water available from that supply to provide appropriate amounts of water for the original proposed plat, subdivided into forty-fifty lots; and perhaps even enough water to also supply any proposed plat of a subdivision of the land owned by Mr. Robert Hanson. However, we have been informed that it is very unlikely that there is sufficient water to supply any significantly more intensive development, such as a

proposed one hundred twenty unit-one hundred sixty unit condominium development on any replatting of Starwater Division No. 1.

3. The sanitary sewer system approved for temporary use with the plat included a community sewage disposal plant. The sewer mains and trunk lines are installed underground in the road right-of-ways of the plat, with the exception of certain short trunk lines which are located near existing lot boundaries. Manholes were installed, and the entire system of sewer mains, trunk lines and manholes probably could be made workable with a reasonable amount of repair and maintenance. It is our understanding that the system has never been inspected, following construction, and that the community sewage treatment plant and drain field were never completed. It is our understanding that the Kittitas County Health Department would now require any further development in Starwater Division No. 1 to become annexed to the Kittitas County Sewer District No. 1, through annexation. The design capacity of the sanitary sewer mains and trunk lines is unknown. The system was originally designed, so we understand, for 40 residential units during the time when the system would be served by the community sewage treatment plant; and for 50 residential units when connected with the Kittitas County Sewer District No. 1. There are serious questions whether the system could accept the intensity of development proposed by Pacific West Marketing, Inc., and any proposed new plat. Vacation of the existing plat without approval of a new sanitary sewer system would make the cabins on Lots 7, 8 and 9 useless.

The following comments further explain the concerns expressed above.

We have been informed and believe that sufficient capacity for a community water supply for a development such as the one potentially proposed by Richard Toohey and Pacific West Marketing, Inc., may require tapping into additional water sources.

Furthermore, a check of title reports reveals to us that there is a lawsuit pending in Yakima County which may affect any access to additional water supplies.

Therefore, we believe that any assumption that there could be any more intensive development than the one originally proposed for Starwater Division No. 1, overlooks some very serious questions about the adequacy of water supply for such a development.

The Kittitas County Health Department has advised us that the original proposal for the plat of Starwater Division No. 1 included a requirement that the plat should apply for and be annexed to the Kittitas County Sewer District No. 1, located just below Hyak in the vicinity of Rocky Runn. However, the Kittitas County Sewer District rejected the application of the developer, because the sewer district did not have sufficient capacity to accept the additional sewage.

Therefore, the Kittitas County Health Department revised its recommendations and permitted the developer to propose a community sanitary sewer system which would be sufficient to serve the first forty lots. That system was to be located on approximately ten lots in the Starwater Division No. 1. At such time as the Kittitas County Sewer District No. 1 developed further capacity, the developer understood that it would be required to apply for annexation to the sewer district system, and remove the community sanitary sewer treatment plant.

The sewer mains and trunk lines were installed in the road right of ways, and in certain easements as provided by the drawings and the dedications of appropriate easements referred to above. However, the community sanitary sewer treatment plant and drain-field was never built, so we have been informed. Under the circumstances, the sanitary sewer main and trunk line system is available for hook-up to the sewer district system, provided the sewage collection system can meet the inspection requirement. We understand that the system has a considerable number of leaks and faults but they probably are repairable.

The Kittitas County Sewer District No. 1 has recently expanded its sewage treatment plant to approximately six times its original capacity. Under the circumstances, the Kittitas County Health Department would no longer permit the development of the land in Starwater Division No. 1, without annexation to the sewer district system.

The whole responsibility for the maintenance of the sewer mains and trunk lines would become that of the sewer district, assuming a complete annexation were approved.

We propose that a condition for vacating the plat should be that all of the same benefits should accrue to Lots 7, 8, and 9, as were originally provided for in the original plat requirements, including the covenants, conditions, restrictions and easements.

That would include the requirement that the developer must annex the sewer mains and trunk line system already installed underground in the roadways of Starwater Division No. 1 to the local sewer district, so as to serve the property, even though the development of the rest of the property in the original plat may be delayed somewhat because of any amendments to the plat or replatting.

A serious problem could arise if increased density of development were permitted. The sewer mains and trunk lines apparently were designed for a development of the size and density of Starwater Division No. 1, with the future potential annexation of Starwater Division No. 2. That second subdivision was never platted. That is the property now owned by Mr. Robert Hanson.

It seems to the Haseks and Jens Neilsen that any proposal to increase the density to one hundred twenty units-one hundred sixty units of timeshare condominiums also served by that same sewer system could, potentially, create a serious overload problem. We suggest that the applicant, Richard Toohey and Pacific West Marketing, Inc., have an obligation to present to the county commissioners their proposal for providing the sanitary sewer service to the owners of the original lots, 7, 8, and 9, and Mr. Robert Hanson, before being permitted to vacate the plat, preparatory to proposing a more intensive development.

In addition, there are provisions and covenants which provide pedestrian access easements across and through the entire Starwater Division No. 1, except for the forty foot circles onto which cabins could be built on each lot under the original plat. The whole purpose and benefit of that plat provision and those easements was to permit recreational access throughout the system, both to the owners in Vikingdal, and to the owners of lots in Starwater Division No. 1, and the proposed future owners of any platting of the property contemplated as Starwater Division No. 2.

While the Haseks and Jens Neilsen do not wish to stand in the way of progress, it is submitted that increasing the density of the development in the tentative replatting of Starwater Division No. 1, except for Lots 7, 8, and 9, would result in serious overcrowding of the land, and change the entire character of the development, to the detriment of the owners of Lots 7, 8, and 9,

as well as other persons were intended to be benefited by the original covenants, conditions, restrictions, and easements.

In addition, the vacation of the plat will leave open serious questions about the cooperative provisions and requirements of the original Starwater Division No. 1 plat, concerning snow removal and road maintenance. Lots 7, 8, and 9 are dependent for their value, in part, by the continued existence of those agreements with respect to snow removal and road maintenance. Some adequate provision must be made to assure that snow removal and road maintenance expenses are appropriately shared and divided between all of the property; rather than falling solely on Lots 7, 8, and 9.

There are practical solutions to most of the questions and problems identified in this letter. Mark Elgot, representing Richard Toohey and Pacific West Marketing, Inc., has offered to discuss possible solution to our concerns some time prior to the next scheduled meeting at which this subject may come before the county commissioners again. We suggest that it is appropriate for all parties in the immediate vicinity, including Vikingdal, Mr. Robert Hanson, Mr. Richard Toohey and Pacific West Marketing, Inc., and the Haseks and Jens Neilsen to meet and discuss appropriate solutions to these problems prior to appearing again before the county commissioners.

However, we wish to emphasize that the applicant may attempt to take certain unilateral steps to modify the covenants, conditions, restrictions and easements which are applicable to this plat. We wish to make it clear that we believe that all such documents were intended as a part of the conditions for the plat, to the extent that they provided for roads, utility services, utility easements, and access easements. Such documents have created vested rights in all persons who claim interest in Lots 7, 8, and 9. We respectfully request that the Kittitas County Commissioners take no action which might inadvertently affect those rights.

Board of County Commissioners
October 11, 1983
Page 9

We suggest that any step toward approving vacation of the plat would be premature at this time.

Sincerely yours,

CARNEY, STEPHENSON, BADLEY,
SMITH & MUELLER

A handwritten signature in black ink that reads "Edward L. Mueller". The signature is written in a cursive style with a large, prominent initial "E".

Edward L. Mueller

Attorneys for Haseks and
Jens Neilsen

ELM:lss

BARGHAUSEN CONSULTING ENGINEERS, INC.

"Land Planning, Survey, and Design Specialists"

October 20, 1983

The Kittitas County Board of
Commissioners
Kittitas County Courthouse
Ellensburg, Washington 98926

RE: Summary of Issues Regarding Proposed Vacation/Plat Amendment
For Starwater Division No. 1
Our Job No. 1050

Dear Commission Members:

As the professional engineering representative for the Pacific-West Marketing, Inc. group, the owners of the Starwater Division No. 1 project, I would like to take this opportunity to briefly summarize the key issues in this request. As a professional engineer and land-use consultant, I have had extensive experience dealing with complex land development projects throughout western Washington. It is my conclusion that almost every land development project or proposal can not and will not satisfy all interested parties, but there is usually always some middle ground or compromise position which can be reached which results in a reasonable use of the property and subsequent benefit for the property owner while at the same time mitigates any impacts on adjoining property owners. I believe that the Starwater Division No. 1 project can also be approached in the same manner.

Pacific-West Marketing, Inc. is the owner in fee simple of the Starwater Division No. 1 project. Although the project is a plat which has been recorded in Kittitas County, it is also a subdivision which exists in name only since the individual building sites can not be constructed due to health department limitations. Regardless of the wishes of the neighboring property owners or the desires of the current property owner, the project simply can not support development as it was previously planned. Of course, if sanitary sewers were extended from the Kittitas County Sewer District to the project and if all of the utility systems within the project were completely upgraded, it would be possible to build on each of the lots. However, this can not be considered a reasonable alternative for the following two reasons. First of all, the cost of extending sanitary sewers to the project will be in excess of \$250,000 and the "cabin sites" can not and will not justify that expenditure. The issue is further clouded by the fact that the water system installed has never been certified by the Department of Social and Health Services and will require substantial upgrading along with new source definition for building permit purposes. Once again, without the resources to fund these improvements, no activity will take place on the subject property.

Pacific-West Marketing, Inc. can hardly be characterized as an insensitive developer. They have expended substantial funds in this first stage for the construction of a quality recreational housing development on the property which is of a different format than that which was previously proposed for the project. However, this alternate format can be just as appealing and just as attractive as that which exists in the neighboring project of Ski Tur Valley. In fact, as a professional design engineer, I believe that the environment will be less impacted by a development which clustered the units on a property and which left a much greater amount of open space and was visualized by the individual lot lay-out and which subsequently preserves a greater percentage of the existing vegetation. The whole theory behind lot clustering to preserve open space is predicated on exactly this concept, and it works well for this project.

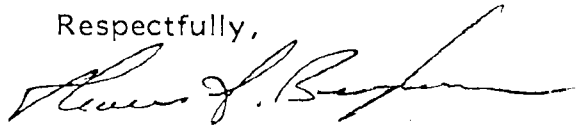
In a recent letter to the Board of Commissioners from Pacific-West Marketing, Inc., a series of voluntary restrictions including a density limitation had been offered as a compromise to mitigate concerns of the neighboring property owners. I believe that this provides further evidence that the owner of the property is attempting to work with the neighboring property owners on this proposal. The original development concept which was presented to the Board indicated that a total of approximately 160 dwelling units in a clustered concept was planned for the property. The modified proposal by the property owner reduces this density by 25% and limits the future development of the property to a maximum of 120 units. This is a substantial voluntary reduction which will result in a substantially higher development cost for the project owner since the extent of utility construction and public improvement that will be required will remain the same.

The choice of the Board members in reviewing this application is a hard one. However, if the vacation/plat amendment is not approved, then the status quo will be preserved and the rights of the property owner himself will be severely impacted. In addition, as stated in the previous public hearing, the ability of the owners of lots seven and eight to obtain utility services for the occupancy will obviously be impaired to a degree which would eliminate the potential use of these cabins until the distant future. It is an unfortunate reality that the costs of extending such basic public services as sewer and power to this area is prohibited to this type of development. Finally, if the status quo remains the same, the residents of Ski Tur Valley will maintain their full and exclusive use of the area. The Starwater Division No. 1 plat will remain vacant and this private open space will remain for the use of those residents that are already in the area. I can not believe that this solution is the best one that is available for this project. I would ask that the Board members carefully consider the alternatives of the actions that are available to them in this case and to grant what

Page Three
The Kittitas County Board of
Commissioners
October 20, 1983

we believe is a reasonable compromise solution which will allow for the controlled development of Starwater Division No. 1 plat while still protecting and enhancing the value of the owners of lots seven and eight of the plat, and which also will protect the access rights for Mr. Hansen to the west and will provide as much as possible similar covenants and common use of the open space for the enjoyment of the residents of the Ski Tur Valley project. I want to thank the Board for their lengthy consideration of these issues and I look forward to the final conclusion on Tuesday, October 25, 1983. Thank you.

Respectfully,



Thomas A. Barghausen, P.E.
President

cc: Mr. Rich Toohey
Mr. Mark Elgot

TAB/ceh

BARGHAUSEN CONSULTING ENGINEERS

"Land Planning and Design Specialists"

October 23, 1982
1050-982

Mr. Tom Pickerell
County Planner
Room 108
Kittitas County Courthouse
5th and Main
Ellensburg, Washington 98926

RE: Proposed PUD development for Starwater Glen

Dear Mr. Pickerell:

Several months ago, I discussed the proposed re-development of the existing plat of Starwater into an interval-ownership condominium development with your office. It was determined at that time, that the proposal could be accommodated by the preparation of a Planned Unit Development for the entire site, which provided details on how the new project would "fit" within the framework of the existing plat. The new owners of the project, Starwater Glen, Inc., have retained the services of this firm to complete the new design and to coordinate with the various public agencies involved with supplying utility services to the project.

We have been working over the past several months on the development of a composite site plan, which I have enclosed for your review. The proposal basically involves a complete vacation of the original plat, and a new development of "6-plex" style buildings constructed in groupings around recreational facilities. The density is based upon a standard of 7200 square feet per unit on a gross acreage basis. The cost of the off-site improvements and the re-construction of the on-site utilities makes it necessary to maximize the use of the site.

We have attended a meeting at the Kittitas County Sewer District No.1, and requested sewer service for the proposed project. Based upon the meeting outcome, it appears that adequate capacity for the proposal will be available, and we are proceeding with the request for annexation into the Sewer District boundary. The water supply method will be by the construction of an individual well on the property. This supply well, accompanied with the distribution system and the reservoir/storage requirements, will be developed under the guidance of the State of Washington Department of Social and Health Services. We have already chosen the well sites, and have requested inspection approval from the agency. We expect to be drilling a test well before the winter sets into the area.

52/Original
168
Proposed

Mr. Tom Pickerell
October 23, 1982
Page 2

The concept of the new development has resulted from an analysis of the existing plat and the market conditions affecting the area. It is apparent that substantial work is still necessary to get the existing lots ready for sale, especially since the on-site drainfield is not the most feasible method for sewage disposal. The platting idea in this location is not the proper use for the property, but the project has already been basically built, and it is now necessary to arrive at an alternate project concept which will retain the original concept of recreational style units, but will be more compatible with the market demand and economics of servicing. As a result, we have determined that the enclosed site plan is a reasonable and effective development proposal, which utilizes a majority of the existing roads and utility lines which can be salvaged, and still retains a maximum amount of open space, recreational opportunities, and generally protects the quality of life in the development.

The owners are proposing to develop the units as a time-share "interval-ownership" development, which would likely link this project up with a national network of similar developments under a "trade-off" arrangement. The site is ideal for this type of development, since it offers excellent winter and summer activities for residents and vacationers. Winter activities to be promoted would include skiing, cross-country skiing, and hiking. Summer activities would include hiking, fishing, and back-packing. Sufficient on-site recreational opportunities, including sport courts, jogging/walking trails, and tot-lot facilities will be provided to supplement the natural outdoor activities available. The proximity of the Snoqualmie Pass Ski areas will undoubtedly offer a great attraction to winter residents, and the development of the project will also provide additional business for these areas, which can benefit from this activity.

The ownership of the common areas within the project, including the roads, would be by the Condominium Association, which would also be responsible for the maintenance of the Forest Service Access Road from I-90 to the project during the year. This will require that snow-removal equipment be maintained and operated by the Association during the winter months, which will remove this burden from other public agencies. This maintenance will also provide for year-around access to the development by emergency vehicles, and for residents.

Since the development is to be completely sewered into the Kittitas County Sewer District No. 1, then it will be necessary to run off-site gravity lines from the development down the Forest Service Road to the frontage road along I-90. After construction, the roadway will be regraded under the supervision of the U.S. Forest Service to provide adequate and safe width and grade to the roadway. The roadways within the project itself will be fully paved, along with the parking lot areas. It is the Owner's intent to provide for a quality development on the site, which will be an asset to the community and will blend in well with the surrounding natural beauty of the area.

In our previous discussions regarding the project, you indicated that this project concept would require administrative approval only, and that the

Mr. Tom Pickerell
October 23, 1982
Page 3

only other approvals that would be required would include an approval from Mr. Kelly's office with regard to the density, and an approval from the Kittitas County Board of Commissioner's with regard to the vacation of the existing plat.

I am therefore respectfully requesting that your office review the enclosed drawings and notify this office of your disposition regarding approval of the project. I will be available to meet with you at your convenience to discuss the project and the specific aspects of the development, and the Owners will also be available for the same purpose. I have written to Mr. Kelly for his review and approval, and will also be sending the vacation request to the County Commissioners in the next several days.

As you know, substantial funds have already been expended on this development, and we are anxious to develop a proposal which will salvage the existing development and will result in the completion of a quality project which can help the economy of the area. If the approval on the project can be obtained over the several months, then the design can proceed, and we may be able to be under construction next spring.

Thank you for your assistance in this regard. I am looking forward to meeting with you personally in the next several weeks to discuss this project.

Respectfully,



Thomas A. Barghausen P.E.
President

TAB/skl
encl.
cc: Starwater Glen, Inc.

BARGHAUSEN CONSULTING ENGINEERS

"Land Planning and Design Specialists"

October 23, 1982
1050-982

Mr. Gordon Kelly
Environmental Health Director
Kittitas County Health Department
507 Nanum
Ellensburg, Washington 98926

COPY

RE: Proposed development of Starwater Glen (Formerly known as plat of Starwater)

Dear Mr. Kelly:

I am enclosing for your review, a copy of a Planned-Unit Development layout for a project known as Starwater Glen, which is to be constructed on the original plat of Starwater, near Snoqualmic Pass, Washington. I believe that you are familiar with the project, and you may recall our conversation several months ago concerning the new revisions to the site development concept. The previously recorded plat does not have adequate sewer and water facilities, and the drainfield proposed for the plat has never been constructed. In addition, market conditions have dictated that this type of development will not be economically feasible.

The enclosed site plan illustrates the new proposal for the project. The units will be condominium style utilizing the "time-share interval ownership" concept. All units will be served by water and sanitary sewer facilities. We are currently working with the State of Washington Department of Social and Health Services with regard to the development of an on-site well supply system, and expect to be drilling a test well this fall. We have already requested a well-site inspection from the DSHS. The proposed distribution system will utilize as much of the existing piping as possible, and we realize that some reconstruction of the existing facilities will be necessary.

We have also met with the Board of Commissioners of the Kittitas County Sewer District No. 1 with regard to the annexation of the property into the sewer district and the future servicing of the development. We are now proceeding with the approval of the annexation and are not going to utilize any on-site sewage disposal facilities in the new project. We will be constructing the transmission lines down the Forest Service Road to the frontage road along I-90, and will connect into the existing sewer district lines that are available.

The density of the project is shown as 168 units, which is based upon a lot-area per dwelling unit of 7200 square feet on the gross acreage. The overall site coverage will actually be less than if individual cabins or buildings were constructed on the existing plat, and more open space development can be

Mr. Gordon Kelly
October 23, 1982
Page 2


achieved under the condominium concept. All pumping stations, and other facilities on-site requiring maintainance, will be the responsibility of the Condominium Association which will retain the services of qualified maintenance personnel on a regular basis, as required by the Health Department.

We have submitted the PUD drawings to Mr. Tom Pickerell of the Planning Department, and have requested a review and analysis of the project. Concurrently, I would ask that you review the proposal and the proposed methods of sewage and water supply, and notify this office, and Mr. Pickerell, with regard to your recommendations for approval of the methods proposed and the density. I will be available to answer any questions regarding the project, and will also be able to arrange a meeting with the project owners if that is needed.

We are looking forward to obtaining final approval on the project this fall, so that the design of the facilities can proceed during the winter months, and then construction in the spring. Please let me know if there is anything I can provide which would assist you in your review.

Thank you for your consideration of this request. I will look forward to hearing from you in the near future.

Respectfully,



Thomas A. Barghausen P.E.
President

TAB/skl
encl.
cc: Starwater Glen, Inc.
Mr. Tom Pickerell

KITTITAS COUNTY HEALTH DEPARTMENT

507 Nanum Street, Ellensburg, WA 98926 / Telephone: (509) 925-1465

505 Power Street, Cle Elum, WA 98922 / Telephone: (509) 674-5513

November 5, 1982

Thomas A. Barghausen, P.E.
6625 South 190th, #102
Kent, WA 98032

Dear Mr. Barghausen:

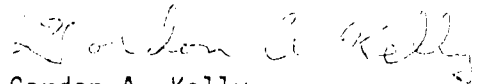
We have received the proposed development plan for Starwater Glen. As long as the development is served by both a public community water system and wastewater system, we will make no comment on the proposed density. The proposed methods of supplying domestic water and disposing of wastewater are satisfactory. We will await further development of those plans before commenting on their adequacy.

One thing that we are very concerned with is that those water and sewage utilities are properly maintained and operated. We suggest you discuss developing an operation agreement with Kittitas County Sewer District #1 to provide these services, keeping it within a public entity rather than a private "Condominium Association."

We will grant preliminary approval when all plans for the wastewater and domestic water systems have been approved by the appropriate agencies including the annexation to Kittitas County Sewer District #1. We will then grant final approval when all systems are constructed, completed, and approved.

If you have any questions, please do not hesitate to contact us.

Sincerely yours,



Gordon A. Kelly
Director of Environmental Health

cc: Robert James, P.E., D.S.H.S.
Tom Pickerel, County Planner
Kittitas County Sewer District #1

GAK/sdf

PROPOSED STARWATER PLAT VACATION

A Summary of Findings and Conclusions

- The laws regulating plats (58.17 RCW) and plat vacations (58.12 RCW) emphasize the public interest and welfare to be served in approval or denial by the public agency.

The proposed vacation of the Starwater Division I plat raises some issues that do affect the public interest as well as interests of surrounding property owners. At this point the determination as to how this proposal would affect these interests is in limbo.... pending negotiations between the four major parties involved.

Unless a satisfactory and reasonable agreement can be reached on the issues raised by the surrounding land owners vacation of Starwater subdivision would at this time be unfair and unwise.

At present the Starwater subdivision provides for reasonable residential densities in a form compatible with other platted development in Gold Creek Valley. Provisions for future sewage disposal and water supply have been approved and are now a matter of public record.

To vacate the recorded plat would create not only an atmosphere of uncertainty regarding these matters but could adversely affect vested interests in the vicinity.

Many questions have been raised during hearings on this proposal that remain unanswered. For example:

How will the owners of lots 7, 8 and 9 be assured of sewage disposal and water supply?

What organization will exist as the entity responsible for road maintenance, water supply and eventual connection to the public sewer system?

As things stand the County is in a reasonably secure position of knowing what development may take place on this property and under what conditions. The same security is enjoyed by Vikendal owners and others.. Unless the questions and concerns expressed by other parties are clearly resolved the public interest would seem to be in retaining the plat in its present form.

LAW OFFICES OF
GEORGE, HULL & PORTER, P.S.

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KAREN L. TALL
RICHARD A. PITT
HOWARD J. HALL
ROBERT R. OTTO
NANCY L. HOLZWANGER

October 20, 1983

REC'D OCT 21 1983

Ms. Elizabeth H. McCune
Mr. Roy Lumaco
Mr. Rich Hoctor
Kittitas County Commissioners
Kittitas County Superior Court
Ellensburg, Washington 98926

Re: Proposed Vacation of Plat of Starwater
Division I

Dear Commissioners:

We are attorneys for Ski Tur Valley Maintenance Company and the lessees of lots in the Vikingdal Plat which is adjacent to the Plat of Starwater Division I. The purpose of this letter is to advise you that our clients have not been able to reach an agreement with Pacific West Marketing, Inc., under which our clients are prepared to consent to the vacation or amendment of the Plat of Starwater Division I as proposed. Accordingly, the record should show that they are opposed to vacation or amendment of the plat. The reasons are as follows:

1. The Plat of Starwater Division I is similar to the plat of Vikingdal in that it provides for 52 lots in a plat of approximately 25 acres; each cabin is to be built on a cabin site having a 40 foot radius; and, only single family dwellings are permitted. This is substantially similar to Vikingdal in both density and concept where the lots are all 40 foot circles and there are 101 lots in a plat of approximately 50 acres.

2. The only plan which our clients have seen for the new development calls for 168 units in a series of two-story eightplexes, plus a lodge containing 50 one-bedroom units. This would result in a density of more than 4 times that permitted under the Starwater plat.

3. The covenants which are incorporated in and accompany the Starwater Plat give certain affirmative rights to our clients which are covenants running with the land. These covenants are enforceable both by the individual lessees in

Ms. Elizabeth H. McCune
Mr. Roy Lumaco
Mr. Rich Hoctor
October 20, 1983

Page 2

Vikingdal and by Ski Tur Valley Maintenance Company. The critical granting portions are as follows:

IT IS HEREBY MADE KNOWN THAT said parties do by these presents make, establish, confirm and hereby impress upon Starwater Division I an addition to Kittitas County, Washington, according to plats thereof recorded in Volume 7 of Plats, Pages 45, 46, 47, records of Kittitas County, Washington, which property is all located in Kittitas County, Washington, the following protective covenants to run with said land, and do hereby bind said party and all of their future grantees, assignees and successors to said covenants for the term hereinafter stated and as follows:

1. All improvements on any lot which are permitted under the terms of these covenants shall be erected within a circular cabin site having a radius of not more than forty feet. All owners of lots in Starwater Division I and all lessees and owners of lots in plat of Ski Tur Valley - Vikingdal Division shall have a free right of passage at all times across and through all portions of lots in Starwater Division I outside the 40-foot cabin site above described and shall not be hindered or interfered with in any respect whatsoever by artificial boundaries or barriers, and through and across all common areas. All lots not sold by the developer shall be deemed common areas for purposes of free access until sold. The above described lots shall be used for recreation or residential purposes for single family only, or for more than one family upon consent of Reintree Corporation; provided, however, that Reintree Corporation may designate sites for swimming pools, tennis courts, and other recreational structures, necessary commercial facilities or utilities and transfer said sites to others.

* * * * *

Ms. Elizabeth H. McCune
Mr. Roy Lumaco
Mr. Rich Hoctor
October 20, 1983

Page 3

7. The foregoing covenants are covenants running with the land and are created for the benefit of all owners in Starwater Division I, and lessees in plat of Ski Tur Valley - Vikingdal Division and may be enforced by any of said persons, and by Ski Tur Valley Maintenance Company, and shall be enforced by Reintree Corporation and/or Section 11, Inc. so long as either one of said corporations owns any interest in any lots in Section 11. Reintree Corporation covenants and agrees with all parties benefited hereby that in the event it fails to enforce any of the foregoing covenants promptly upon notice of any of the parties benefited thereby that such parties or persons or Ski Tur Valley Maintenance Company may take such action as it or they deem appropriate or necessary to enforce said covenants the expense of which Reintree Corporation and/or Section 11, Inc. jointly and severally agree promptly to pay together with all costs and fees incurred in any enforcement action if the party prevails.

The paragraphs between 1 and 7 contain a series of specific use restrictions. All of these rights and protections are important to our clients.

At this point there is no adequate means to assure that these covenants will be perpetuated in any new development since the vacation of the old plat and approval of a new one are separate.

4. The higher density proposed by the developer will severely impact the valley by bringing large numbers of people in.

5. Vacation or amendment of the plat as requested will probably impair the values of the homes in Vikingdal. Certainly, if substantially higher density is approved without some other significant benefit to the Vikingdal owners, the value of their homes will diminish. Also, the uncertainty that will prevail until a new development scheme

Ms. Elizabeth H. McCune
Mr. Roy Lumaco
Mr. Rich Hoctor
October 20, 1983

Page 4

is approved will have a similar depressing effect in the valley.

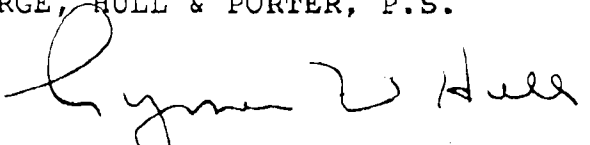
6. The petition to vacate or amend the plat of Starwater Division I has not been made in accordance with RCW 58.12.010. That statute requires a petition to be made by three-fourths in number and area of the owners of the plat to be amended or vacated. Since there are other owners of Lots 7, 8, and 9, who have not joined in the petition, the petitioner does not represent three-fourths in number of the owners. It is also our contention that Ski Tur Valley Maintenance Company and the lessees of lots in Vikingdal are "owners" within the meaning of 58.12.010 in as much as the covenants covering Starwater Division I are covenants running with the land and are enforceable by our clients. For your information, the Superior Court for King County has ruled against a proceeding brought by Pacific West Marketing, Inc. to invalidate the covenants.

Accordingly, it does not seem prudent to vacate or substantially amend a plat which is consistent with the existing development in the area in favor of no plat and therefore an unknown circumstance, at best, or density which is four times greater, at worst.

Very truly yours,

GEORGE, HULL & PORTER, P.S.

By



Lyman W. Hull

LWH:psd

66

Oversized Document removed and scanned

Description _____

File Name _____

Parent Document _____